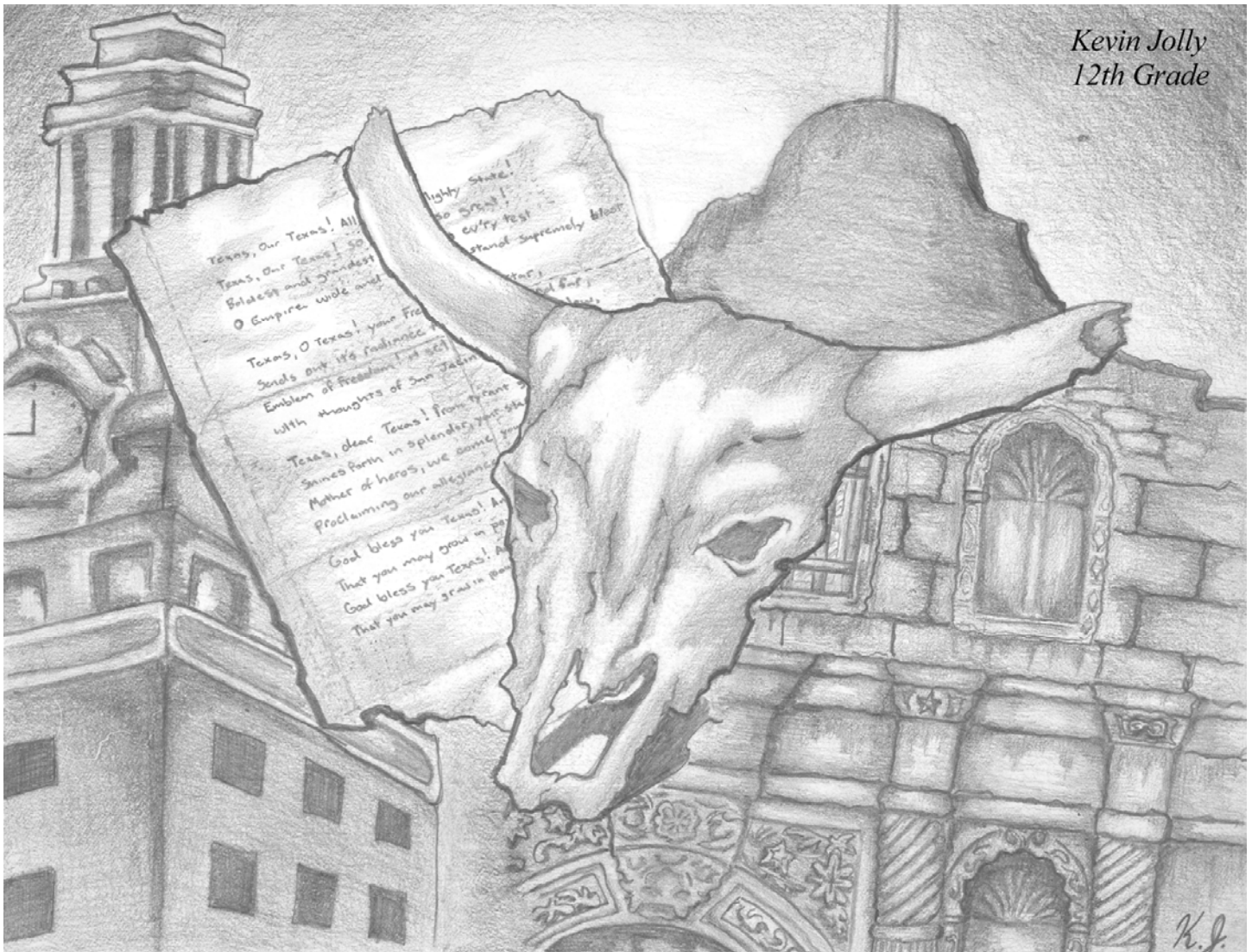

TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0684-GA

Requestor:

The Honorable Susan Combs
Comptroller of Public Accounts
Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether an applicant who has a leasehold interest in "qualified property" is eligible to apply for a limitation on the appraised value of the qualified property (RQ-0684-GA)

Briefs requested by April 11, 2008

RQ-0685-GA

Requestor:

The Honorable Jeri Yenne
Brazoria County Criminal District Attorney
County Courthouse
111 East Locust, Suite 408A
Angleton, Texas 77515-4676

Re: Whether a municipal court has jurisdiction to hear "dangerous dog" determination appeals and compliance hearings (RQ-0685-GA)

Briefs requested by April 14, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801515

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 19, 2008



Opinions

Opinion No. GA-0606

The Honorable Jeff Wentworth
Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the criminal trespass provisions of section 30.05 of the Penal Code apply to recreational vehicle parks (RQ-0621-GA)

S U M M A R Y

Property used as an RV park is "property" where criminal trespass may occur. Whether a particular person has committed criminal trespass on such property depends on the circumstances and the effect to be given to any agreement with the owner of the property concerning the person's rights of entry or presence on the property.

Opinion No. GA-0607

The Honorable Jeri Yenne
Brazoria County Criminal District Attorney
111 East Locust, Suite 408A
Angleton, Texas 77515

Re: Whether Senate Bill 1161 (2007) and House Bill 2884 (2007), both of which amended Education Code section 25.0951, can be harmonized (RQ-0625-GA)

S U M M A R Y

Because they can be harmonized, both of the enactments adopted by the Eightieth Legislature amending Education Code section 25.0951(a) are effective. *Compare* Act of May 25, 2007, 80th Leg., R.S., ch. 908, §31, 2007 Tex. Gen. Laws 2274, 2288, *with* Act of May 23, 2007, 80th Leg., R.S., ch. 984, §1, 2007 Tex. Gen. Laws 3457, 3457-58. Consequently, section 25.0951(a) requires a school district, within ten school days of the student's tenth absence, to file a complaint against or to refer to juvenile court a student who fails to attend school without excuse for at least ten days or parts of days within a six-month period.

If the school district files an untimely complaint or referral, it may file a new complaint that lists some of the absences named in the dismissed complaint in addition to a subsequent, previously unlisted unexcused absence. The new complaint must be filed within ten days of the tenth absence listed in the new complaint.

Opinion No. GA-0608

The Honorable Susan D. Reed
Bexar County Criminal District Attorney

Cadena-Reeves Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

Re: Whether article 2.122(a)(6) of the Code of Criminal Procedure, which grants certain state felony law enforcement authority to inspectors of the United States Postal Service, applies to inspectors of both the United States Postal Inspection Service and the United States Postal Service, Office of Inspector General (RQ-0628-GA)

S U M M A R Y

Article 2.122(a)(6) of the Texas Code of Criminal Procedure grants certain state powers of arrest, search, and seizure to inspectors of the

United States Postal Inspection Service and to inspectors of the United States Postal Service, Office of the Inspector General.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801496

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 18, 2008

◆ ◆ ◆

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-543. The Texas Ethics Commission has been presented with the following facts and the following questions relating to the facts:

A court employee diligently carrying out his or her responsibilities fails to take vacation time at the rate desired by the county. The workload did not make taking time off at the rate desired by the county practical. Nevertheless, the county chooses to deny this benefit to the employee and the employee loses vacation time.

The question is whether the judge may use political funds to fairly and reasonably compensate the employee when the county fails to do so. If so, may the judge use personal funds to compensate the employee, disclose the expenditure as a political expenditure made from personal funds, and preserve the right to seek reimbursement from political funds by reporting the expenditure on Schedule G and checking the box indicating that the expenditure is subject to reimbursement from personal funds?

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following

statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200801447
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: March 14, 2008

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 8. PROJECT ACCESS PROGRAM RULES

10 TAC §8.1

The Texas Department of Housing and Community Affairs (the Department) proposes new §8.1, concerning Project Access Program Rules. The purpose of the proposed new section is to define the eligibility criteria that apply to Project Access voucher recipients.

Michael Gerber, Executive Director, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section as proposed.

Mr. Gerber has also determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section will be the provision of affordable housing options for persons with disabilities transitioning from institutions into the community. There will be no adverse economic effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new section as proposed.

The public comment period will be between March 28, 2008 and April 30, 2008 to receive public input on this rule. Written comments may be submitted to Texas Department of Housing and Community Affairs, Brenda Hull, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to brenda.hull@tdhca.state.tx.us, or by fax to (512) 469-9606.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed new section.

§8.1. Project Access Program Rules.

(a) Purpose. Project Access is a program that utilizes federal Section 8 Housing Choice Vouchers administered by the Texas Department of Housing and Community Affairs to assist low-income non-elderly persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. The purpose of this rule is to define the eligibility criteria that apply to Project Access voucher recipients.

(b) Definitions.

(1) Board--The board of directors of the department.
(2) Department--The Texas Department of Housing and Community Affairs.

(3) Section 8--The United States Department of Housing and Urban Development Section 8 Housing Choice Voucher Program administered by the Texas Department of Housing and Community Affairs.

(4) At-Risk Applicant--Applicant that meets the following criteria:

(A) current recipient of Tenant-Based Rental Assistance from the Department's HOME Investments Partnership Program; and

(B) within 120 days prior to expiration of assistance.

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Project Access Eligibility Criteria. A Project Access voucher recipient must meet all Section 8 eligibility criteria as well as meet all of the following eligibility criteria:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently;

(2) be less than 62 years of age at the time of voucher issuance; and

(3) meet one of the following criteria:

(A) be an At-Risk Applicant and a previous resident of a nursing facility, intermediate care facility, or board and care facility as defined by the U.S. Department of Housing and Urban Development; or

(B) be a current resident of a nursing facility, intermediate care facility, or board and care facility at the time of voucher issuance as defined by the U.S. Department of Housing and Urban Development.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801473

Michael Gerber
Executive Director

Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 27, 2008
For further information, please call: (512) 475-3916

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §232.4, §232.5

The State Board for Educator Certification (SBEC) proposes amendments to §232.4 and §232.5, relating to types and classes of certificates issued. The proposed amendments replace the earlier versions that were published as proposed in the February 1, 2008, issue of the *Texas Register* (33 TexReg 828), which have been withdrawn. Notice of the withdrawn amendments to §232.4 and §232.5 can be found in the Withdrawn Rules section of this issue. Like the earlier versions, the proposed amendments would clarify the requirements for probationary certificates and temporary teacher certificates. The new proposal also addresses special education assignment at the public middle or high school level (Grades 7-12) and training requirements for temporary teacher certificate holders.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031, authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

The Texas Education Agency (TEA) staff presented draft proposed changes to the SBEC at the July 2007 meeting and at the November 2007 meeting following a September 26, 2007, staff meeting with stakeholders. The SBEC took action at the January 2008 meeting to approve proposed revisions to 19 TAC Chapter 232 for filing as proposed with the *Texas Register*. Following the public comment period, the SBEC took action to adopt, subject to State Board of Education review, proposed revisions to 19 TAC Chapter 232 as published as proposed, with the exception of §232.4, Probationary Certificates, and §232.5, Temporary Teacher Certificates. The SBEC also took action to approve substitute rule text for §232.4 and §232.5 for filing as proposed.

Following is a description of the proposed amendments to §232.4 and §232.5.

Language would be revised in §232.4(a)(4) and (5) to provide for incorporation of requirements imposed by subsequent amendments to the No Child Left Behind Act (NCLB) into the rule. Also, a definition for Early Childhood would be added to §232.4(a).

Language would be revised in §232.4(c)(1) to clarify that a recognized regional accrediting organization would be as specified in 19 TAC Chapter 230, Subchapter Y. Language would also be

added to include an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB). Also, the phrase, "or otherwise approved by a state department of education," would be deleted to ensure educators meet rigorous standards outlined by the accrediting agencies recognized by the THECB.

Language would be revised in §232.4(c)(3) and (d)(1) to remove reference to an alternative certification program.

Language would be revised in §232.4(c)(7) to further define public elementary school level as Early Childhood-Grade 6 and public middle or high school level as Grades 7-12. Language would be added in subsection (c)(7)(B) specifying that an educator would need to pass the appropriate content area certification examination to teach in Grades 7-12. Language would also be revised to specify that the upper division coursework would need to be in the subject taught.

Section 232.4 would be changed by adding new subsection (c)(8) to clarify the requirements for a probationary certificate in a special education assignment. The change being proposed in subsection (c)(8)(A) would specify the special education assignment requirements at the public elementary school level. The change being proposed in subsection (c)(8)(B) reflects action taken by the SBEC at its March 7, 2008, meeting that would require a teacher in a special education assignment at the public middle or high school level to pass the appropriate special education Early Childhood-Grade 12 examination and demonstrate content area mastery by either: (1) passing the appropriate content area certification examination, or (2) completing 24 college-level semester hours in the content area. This new change in subsection (c)(8)(B) replaces an earlier version, which has been withdrawn, after TEA staff discovered that the language was incorrect and would have been contrary to established practice.

Language would be revised in §232.4(d) to clarify that a probationary certificate would be for a 12-month period from the date of issuance. Language would also be amended in subsection (d)(2) to change from three school years to three 12-month periods the maximum term that an individual may be employed under a probationary certificate and to list the certificate(s) an individual would be required to hold during the time period.

Language in §232.5(f) reflects action taken by the SBEC at its March 7, 2008, meeting, after TEA staff determined that the training and support requirements should align with the requirements for educator preparation programs in 19 TAC Chapter 228. This new change being proposed would provide that coursework, mentoring, and training for a temporary teacher certificate holder would be the same as that required of an educator preparation program in Chapter 228. The earlier version, which has been withdrawn, would have retained training and support requirements currently in rule for temporary teacher certificate holders. A clerical correction is proposed to §232.5(i) in order to conform an existing cross-reference to reflect these changes.

Language would be amended in §232.5(j) that would clarify that the district has the option of recommending an individual for the standard certificate upon completion of all requirements.

Changes to Comply with Senate Bill (SB) 9, 80th Texas Legislature, 2007

As a result of passage of SB 9, changes are recommended to §232.4(c)(6) and §232.5(a)(4). Language would be added to

require that an individual submit fingerprints in accordance with the TEC, §22.0831.

Technical Changes

Throughout §232.4 and §232.5, numerous grammatical and technical changes would be made, such as replacing the term "Executive Director" with the term "TEA staff" and replacing the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements.

Dr. Raymond Glynn, acting deputy commissioner for school district leadership and educator quality, has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Dr. Glynn has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of the proposed amendments would be ensuring that certified educators have the appropriate training and certificate to address the educational needs of students. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

No economic impact is anticipated for small businesses or microbusinesses, therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the TEC, §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the require-

ments for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §22.0831(c), which states that the SBEC shall review the national criminal history record information of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review; §22.0831(f), which allows the SBEC to propose rules establishing deadlines for a person to submit fingerprints and photographs in compliance with §22.0831, National Criminal History Record Information Review of Certified Educators; and sanctions for a person's failure to comply with the requirements of §22.0831, including suspension or revocation of a certificate or refusal to issue a certificate; and §22.0831(g), which requires the SBEC to establish a schedule for obtaining and reviewing the information a certified educator must provide the SBEC under §22.0831. Not later than September 1, 2011, the SBEC must obtain all national criminal history record information on all certified educators.

The proposed amendments implement the TEC, §§21.003(a); 21.031; 21.041(b)(1) - (5) and (9); and 22.0831(c), (f), and (g).

§232.4. Probationary Certificates.

(a) The following definitions apply, when used in this section ~~[chapter]~~, unless the rule or context in which the word or phrase is used requires a different definition. ~~[]~~

(1) ~~[]~~ Alternative certification program--An [] means an educator preparation program that offers an alternative route to certification as authorized under Chapter 228 of this title ~~([] relating to Requirements for Educator Preparation Programs)~~.

(2) ~~[]~~ Core academic subject--[] means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, history, geography, or the arts.

(3) Early Childhood--Children ages 3-5.

(4) ~~{ }~~ High-quality professional development--As [as] defined by the No Child Left Behind Act of 2001, 20 United States Code (USC), §7801 (2001, as amended) and its subsequent amendments, which includes, but is not limited to, activities that are sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction; that advance the teacher's understanding of effective instructional strategies; that are developed with participation of teachers, principals, parents, and administrators; and that are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement.

(5) ~~{ }~~ Mentoring--As [as] defined under the No Child Left Behind Act of 2001, 20 USC ~~[U. S. C.]~~, §7801 and its subsequent amendments, which includes, but is not limited to, activities that consist of structured guidance and regular ongoing support for beginning educators, especially beginning teachers, as part of a developmental induction process designed to assist educators ~~[the educator]~~ in their professional growth and development. Beginning educator support is to be provided by an experienced educator who has been trained in mentoring.

(b) A probationary certificate may be issued for any class of certificate except educational aide.

(c) A probationary certificate may be issued to an individual who meets the conditions and requirements prescribed in this subsection.

(1) The individual must hold, unless otherwise approved by the State Board for Educator Certification (SBEC) [SBEC], at least a bachelor's degree from an institution of higher education that, when the degree was conferred, was accredited by a [or otherwise approved by a state department of education,] recognized governmental organization; [or] a recognized regional accrediting organization as specified in Chapter 230, Subchapter Y, of this title (relating to Definitions); or an accrediting organization recognized by the Texas Higher Education Coordinating Board. [;]

(2) The individual must meet appropriate requirements prescribed in §230.413 of this title ([;] relating to General Requirements). [;]

(3) The individual must have been accepted to participate in an approved Texas educator preparation [alternative certification] program and has been assigned to serve in the subject area and at the grade level of certification sought. [;]

(4) The individual must receive mentoring and high-quality professional development that is sustained, intensive, and classroom-focused prior to and throughout the assignment. [;]

(5) The individual must pay the fee prescribed in [by] §230.436 of this title ([;] relating to Schedule of Fees for Certification Services). [Fees;]

(6) The individual must submit fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

[(6) The teacher in a core academic subject in a program supported with funds under Title I, Part A, of the No Child Left Behind Act of 2001, 20 U. S. C., §§6311-6339 must demonstrate mastery of each subject to be taught.]

[(A) at the public elementary school level, by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or]

[(B) at the public middle or high school level,]

[(i) by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title, relating to Educator Assessment; or]

[(ii) have an academic major, graduate degree, or coursework equivalent to an academic major that complies with Section 21.050, Education Code, and comprises not fewer than 24 semester hours; and]

(7) The teacher in a core academic subject must demonstrate mastery of each subject to be taught. [-]

(A) at the public elementary school level (Early Childhood-Grade 6), by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title (relating to Assessment of Educators)[, relating to Educator Assessment]; or

(B) at the public middle or high school level (Grades 7-12): [;]

(i) by passing the appropriate content area certification examination as prescribed in Chapter 230, Subchapter A, of this title[, relating to Educator Assessment]; or

(ii) by completing [have] an academic major, graduate degree, or coursework equivalent to an academic major that complies with the TEC, §21.050 [Section 21.050, Education Code], and comprises not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject taught.

(8) The teacher in a special education assignment must demonstrate mastery of each subject to be taught:

(A) at the public elementary school level (Early Childhood-Grade 6):

(i) by passing the appropriate certification examination as prescribed in Chapter 230, Subchapter A, of this title for the assignment; and

(ii) by passing a special education Early Childhood-Grade 12 examination; or

(B) at the public middle or high school level (Grades 7-12):

(i) by passing the appropriate content area certification examination as prescribed in Chapter 230, Subchapter A, of this title for the assignment or by completing an academic major, graduate degree, or coursework equivalent to an academic major comprised of not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject taught; and

(ii) by passing a special education Early Childhood-Grade 12 examination.

(d) A probationary certificate shall be valid for a 12-month period [one calendar year] from the date of issuance, except as otherwise provided under this title.

(1) A certificate may be extended for no more than two annual terms following expiration of the initial term. A probationary certificate may be extended for an annual term only if the Texas educator preparation [alternative certification] program, recommends extension and certifies that the holder is making satisfactory progress toward standard certification.

(2) Without obtaining initial, standard certification, an individual may not serve for more than three 12-month periods while holding:

(A) probationary certificates as described in this subsection;

(B) emergency certificates as specified in §230.512 of this title (relating to Emergency Certificates); or

(C) one-year certificates as specified in Chapter 230, Subchapter O, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

[(2) An individual may not serve for more than three school years without obtaining initial, standard certification.]

(e) The Texas Education Agency (TEA) staff [executive director of the State Board for Educator Certification or a designee] shall establish reasonable procedures to implement this section.

[(1) Subsection (e)(6) of this section shall be effective immediately.]

[(2) Subsection (e)(7) of this section shall be effective and shall supersede subsection (e)(6) of this section on June 30, 2006.]

(f) For purposes of this section, "TEA staff" means staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

§232.5. Temporary Teacher Certificates.

(a) A person may be temporarily certified to teach only in Grades [grade levels] 8-12 if the person:

(1) holds a baccalaureate or advanced degree from an accredited institution of higher education received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to at least one area of the curriculum as prescribed under the Texas Education Code (TEC), Chapter 28, Subchapter A~~[- Chapter 28, Texas Education Code]; [and]~~

(2) performs satisfactorily on the appropriate examinations prescribed under the TEC, §21.048 ~~[Section 21.048, Texas Education Code]; [and]~~

(3) passes a criminal history background check by submitted fingerprints for review; ~~and [-]~~

(4) ~~submits fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.~~

(b) A certificate issued under this section is valid for a term not to exceed two academic years.

(c) A person may receive a certificate to teach only in a subject area of the curriculum prescribed under the TEC, Chapter 28, Subchapter A, ~~[Chapter 28,]~~ in which the person holds a baccalaureate or advanced degree from an institution of higher education with an academic major related to that area of the curriculum. Guidelines for determining the academic major related to the current Grades ~~[grades]~~ 8-12 certificate structure will be developed by the Texas Education Agency (TEA) staff ~~[Executive Director].~~

(d) A person who applies for a temporary teaching certificate under this section shall pay a fee equal to that required of applicants for a probationary certificate under §230.436 of this title (relating to Schedule of Fees for Certification Services).

(e) A person who holds a certificate under this section may be employed by a school district only if the person and the school district agree that the person will be employed under a probationary contract for each year of the person's employment with the district.

~~(f) A school district employing a person who holds a certificate issued under this section must provide the same coursework, mentoring, and training that is required by Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).~~

~~{{(f) A school district employing a person who holds a certificate issued under this section must provide the board with evidence that it will provide the person with intensive support during the person's employment with the district, including:}}~~

~~{{(1) mentoring in which the mentoring program is modeled on research-based mentoring and induction programs;}}~~

~~{{(2) pre-service training that addresses the following areas before the first day of the start of the student academic year and ongoing appropriate professional development must include, but not be limited to, the following areas:}}~~

~~{{(A) school policies and relevant state and federal law;}}~~

~~{{(B) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;}}~~

~~{{(C) curriculum organization, planning, and evaluation, including the scope and sequence of the Texas Essential Knowledge and Skills in the subject area in which the teacher holds a certificate, and}}~~

~~{{(D) basic principles and procedures of classroom management with emphasis on classroom discipline, using group and individual processes;}}~~

(g) Districts delivering the required intensive support for an educator holding the temporary teacher certificate must follow guidelines established by the TEA staff ~~[Executive Director]~~ with evidence indicating the ability to comply with the provisions of this chapter.

(h) A school district may require that a person who will be employed by the district and who holds a temporary teacher certificate issued under this section complete a teacher training program.

(i) At the end of the two years of employment, the person must apply to the SBEC ~~[State Board for Educator Certification]~~ for a standard certificate. The person must also be recommended by the current employing school district for certification. All employing school districts must provide evidence to the SBEC ~~[board]~~ that each district ~~complied with the requirements of subsection (f) of this section [provided the aforementioned intensive support].~~

(j) A standard teaching certificate may ~~shall~~ be issued to a person under this section if:

(1) the person held a temporary teacher certificate issued under this section;

(2) the person has been continuously employed as a teacher of record in a public school district for two academic years; and

(3) the employing district(s) has (have) favorably reviewed the person's performance, including classroom performance and performance in any teacher training program(s). Each school district must predominately base the review of a person's performance on the increase in achievement of his or her ~~[the]~~ students ~~[over which the person has had charge].~~

(k) At the end of the two years of employment, if a person is granted a standard certificate, the person may not apply for or receive another temporary certificate under this section ~~[rule]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801475

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.13

The Texas Board of Professional Engineers proposes an amendment to §137.13, relating to Inactive Status. The pro-

posed amendment is related to the fee increase paid by license holders filing for inactive status.

The proposed rule change would not require a license holder who is filing for inactive status to pay the \$200 fee increase as provided under the Texas Engineering Practices Act, Texas Occupations Code §1001.206.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there is a potential for very minor fiscal implications for the state and no fiscal implications for local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There may be a positive fiscal impact to individuals required to comply with the rule as they may file for inactive status without paying the \$200 fee increase. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a simplification of the inactive status filing process and potentially more licensees remaining in the licensure system.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.206 exempting licensees in Inactive Status from paying the fee increase, and Occupations Code §1001.355 providing for an Inactive Status for license holders.

No other statutes, articles or codes are affected by the proposed amendment.

§137.13. Inactive Status.

(a) A license holder may request in writing to change the status of the license to "inactive" at any time. A license holder whose license is inactive may not practice engineering. A license holder who has requested inactive status shall not be required to pay the fee increase per §1001.206 of the Act and shall not receive any refunds for licensing fees previously paid to the Board.

(b) A license holder whose license is inactive must pay an annual fee as established by the board at the time of the license renewal. If the inactive fee is not paid by the date a person's license is to expire, the inactive renewal fee for the expired license shall be assessed the required annual renewal fees and late fees [increased] in the same manner as for an active license renewal [fee].

(c) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801455

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 440-7723



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.7

The Texas State Board of Examiners of Psychologists proposes amendments to §469.7, Persons with Criminal Backgrounds. The amendments are being proposed to clarify the rule and make it concur with Chapter 53 of the Occupations Code.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§469.7. Persons with Criminal Backgrounds.

(a) The Board may revoke or suspend an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license due to a felony or misdemeanor conviction if the offense directly relates to the performance of the activities of a licensee and the conviction directly affects such person's present fitness to perform as a licensee of this Board.

(b) The Board shall revoke an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license due to a felony conviction under Section 35A.02 of the Texas Penal Code, concerning Medicaid fraud.

(c) No person currently serving a sentence in prison for a felony is eligible to obtain or renew his/her license.

(d) In determining whether a criminal conviction directly relates to the performance of a licensee, the Board shall consider the factors listed in the Texas Occupations Code, Chapter 53.

(e) Those crimes which the Board considers as directly related to the performance of a licensee include but are not limited to:

(1) a misdemeanor and/or felony offense under the following titles of the Texas Penal Code:

(A) Title 5, pertaining to offenses against the person (for example, homicide, kidnapping, sexual offenses, and assaultive offenses);

(B) Title 7, pertaining to offenses against property (for example, arson, robbery, burglary, theft, fraud, money laundering, and insurance fraud);

(C) Title 8, pertaining to offenses against public administration (for example, bribery, perjury, and obstruction of justice);

(D) Title 9, pertaining to offenses against public order and decency (for example, disorderly conduct and public indecency);

(E) Title 10, pertaining to offenses against public health and safety (for example, weapons offenses, gambling, and intoxication offenses); and

(F) Title 4, pertaining to the offenses of attempting or conspiring to commit the offenses listed in subsections (a) - (e) of this section.

(2) any criminal violation of the Psychologists' Licensing Act or other statutes regulating or pertaining to the profession of psychology;

(3) any criminal violation of statutes regulating other professions in the healing arts, which includes, but is not limited to medicine and nursing;

(4) any crime involving moral turpitude;

(5) any offense involving the failure to report abuse;

(6) any state or federal drug offense, including violations of the Controlled Substances and Dangerous Drugs Act; and

(7) any other misdemeanor or felony that the Board may consider in order to promote the public safety and welfare, as well as the intent of the Act and these rules.

(f) In determining whether a criminal conviction directly affects ~~a person's~~ present fitness of the licensee, [-] the Board shall consider the factors listed in Texas Occupations Code, Section 53.023.

(g) It shall be the responsibility of the licensee ~~[applicant]~~ to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities regarding all criminal offenses.

(h) The licensee ~~[applicant]~~ shall also furnish proof in such form as may be required by the Board that he/she maintained a record of steady employment and has supported his/her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he/she has been convicted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2008.
TRD-200801381

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7706

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER C. LICENSE RENEWALS

22 TAC §571.57

The Texas Board of Veterinary Medical Examiners proposes new §571.57, regarding the application of monetary funds to unpaid administrative penalties.

The proposed new rule will allow the Board to apply any monetary funds sent to the Board by a licensee to first be applied to any outstanding administrative penalties owed by the licensee.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will ensure that any outstanding administrative penalties owed to the Board will be paid without further court expense by the State.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.57. Application of Monetary Funds to Unpaid Administrative Penalties.

When a person pays monetary funds to the Board to renew a license, the monetary funds paid shall first be applied to any outstanding administrative penalties owed from a final Board order, as authorized under §573.62(b) of this title (relating to Violation of Board Orders/Negotiated Settlements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801458

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7563



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.51

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.51, regarding rabies control.

The proposed amendment would require a veterinarian that issues a rabies vaccination certificate or the veterinary practice where the certificate was issued to retain a readily retrievable copy of the certificate. The proposed amendment will conform the Board's rule to the current practice and policy of the Board where the veterinary practice may keep the certificate if the certificate was issued there and the client has not transferred when a veterinarian leaves the veterinary practice.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that rabies vaccination certificates are held for an appropriate amount of time to allow for the effective control of rabies in Texas.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.51. Rabies Control.

(a) Only the vaccinating veterinarian shall issue official rabies vaccination certificates. Each certificate shall contain the information required by 25 TAC §169.29 adopted by the Department of State Health Services [Texas Department of Health], including:

- (1) owner's name, address and telephone number;
- (2) animal identification species, sex (including neutered if applicable), approximate age (three months to 12 months, 12 months or older), size (pounds), predominant breed, and colors;
- (3) vaccine used producer, expiration date and serial number;
- (4) date vaccinated;
- (5) date vaccination expires (re-vaccination due date);
- (6) rabies tag number if a tag is issued; and
- (7) veterinarian's signature or signature stamp and license number. Use of a veterinarian's signature stamp on a vaccination certificate by a non-licensed person shall be authorized only under the direct supervision of the vaccinating veterinarian.

(b) A veterinarian may allow a non-licensed person to administer a rabies vaccine, provided the non-licensed person is under the direct supervision of the veterinarian.

(c) Each veterinarian that issues a rabies vaccination certificate, or the veterinary practice where the certificate was issued, shall retain a readily retrievable copy of the certificate for a period of not less than five years from the date of issuance.

(d) A veterinarian having knowledge of an animal bite to a human shall immediately report the incident to the local health authority. A veterinarian preparing an animal's body for rabies diagnosis shall comply with all requirements of 25 TAC §169.33 adopted by the Department of State Health Services [Texas Department of Health].

(e) A veterinarian who ceases the practice of veterinary medicine shall deliver to the local health authority all duplicate rabies vaccination certificates issued by the veterinarian within the preceding five-year period. A veterinarian who sells or leases his practice to another veterinarian may transfer duplicate rabies certificates with the records of the practice which are transferred to a new owner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801459

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7563



SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.62

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.62, regarding the violation of Board orders or negotiated settlements.

The proposed amendment would authorize the Board to deny a request for renewal if the licensee has not paid a final administrative penalty. The proposed amendment also lays out the circumstances where the rule does not apply.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will ensure that any outstanding administrative penalties owed to the Board will be paid without further court expense by the State.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.62. Violation of Board Orders/Negotiated Settlements.

(a) All persons that are the subject of a Board order shall abide by the terms of the order. The Board may open a complaint against a person who violates a Board order and/or refer the person to the Attorney General for prosecution under the Veterinary Licensing Act, Texas Occupations Code, Chapter 801, and the Administrative Procedure Act, Government Code, §2001.202.

(b) The Board may deny a person's request to renew a license issued under Title 4, Chapter 801 of the Texas Occupations Code if the person has not paid an administrative penalty imposed under Title 4, Chapter 801 of the Texas Occupations Code. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Title 4, Chapter 801 of the Texas Occupations Code;

(2) the person has requested a hearing under Title 4, Chapter 801 of the Texas Occupations Code, but the person's time to pay has not expired under the same statute or Board rules; or

(3) the penalty is stayed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801460

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7563



22 TAC §573.67

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Veterinary Medical Examiners proposes the repeal of §573.67, regarding temporary license suspensions.

The proposed repeal is in conjunction with proposed new §575.35 as part of the agency rule review of Chapter 575. The proposed repeal will allow for better organization of Chapter 573 and Chapter 575 of the Board's rules. The subject matter regarding temporary license suspensions is addressed in proposed new §575.35. Chapter 575 generally discusses the practice and procedure rules for the Board, and therefore is a more appropriate place for a rule regarding temporary license suspensions.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the repeal is in effect there will be no foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the repeal. Mr. Helmcamp also determined that there will be no probable direct adverse effect on small businesses, micro businesses, or local or state employment. Mr. Helmcamp has also determined that there will be no probable economic cost to persons required to comply with the repeal as proposed.

Mr. Helmcamp has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit will be to have more organized Board rules.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.67. Temporary License Suspensions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: April 27, 2008
For further information, please call: (512) 305-7563

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22 TAC §573.76

The Texas Board of Veterinary Medical Examiners received a petition for rulemaking to propose an amendment to §573.76, regarding the sterilization of animals from releasing agencies.

The proposed amendment will require the releasing agency of an animal to record microchip information in a database of their own or that of the microchip manufacturer. The proposed amendment deletes the requirement that the owner of the animal is responsible for recording the microchip information with the microchip manufacturer.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and minor fiscal implications for local government as a result of enforcing or administering the rule as proposed, though TBVME is unable to calculate the exact amount of fiscal implication. TBVME anticipates there being a possible minor fiscal implication to local government releasing agencies if they choose to microchip rather than tattoo an animal to identify a sterile animal. Both methods, tattooing and microchipping, are acceptable under the current rule. The releasing agency has the choice to determine which method they wish to use under the current rule. This proposed rule does not change this requirement. However, if a releasing agency does choose to microchip, under the proposed rule, there may be a minor fiscal implication for administrative costs associated with recording database information, depending on the process chosen by the releasing agency. Mr. Helmcamp has determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that animals coming through releasing agencies will be more readily identifiable as being sterile, thereby reducing unnecessary abdominal surgery on unidentified sterile animals.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.76. Sterilization of Animals from Releasing Agencies.

(a) Definitions. The following words, when used in this section, have the following meaning:

(1) Releasing agency--a public or private animal pound, shelter, or humane organization. This term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(2) Animal--a dog or cat.

(3) Microchip--a transponder that is placed under an animal's skin by an injector and can be read by a microchip scanner.

(4) Tattoo--a permanent etching formed by injecting ink into the basal layer of the epidermis of an animal.

(b) Sterilization required. A new owner of an animal released from a releasing agency must have the animal sterilized in accordance with Chapter 828, Health & Safety Code.

(c) Identification markers. An animal sterilized under this section must be identified by a microchip and/or a tattoo indicating that it has been sterilized.

(1) The releasing agency [~~A new owner~~] of an animal with a microchip shall be responsible for recording the information in its own database or providing information to the data base registry of the microchip manufacturer indicating that the animal has been sterilized.

(2) A tattoo must:

(A) be placed on the inside of the animal's thigh near the abdomen or on the caudal-ventral abdomen;

(B) be imprinted with ink that is manufactured in the United States;

(C) meet the standards of the federal Food and Drug Administration for tattooing;

(D) be of a contrasting color to the predominant color of the skin in which it is tattooed; and

(E) consist of the universal symbol for male or female overlain by a slash through the circle to indicate sterilization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563

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22 TAC §573.77

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Veterinary Medical Examiners proposes the repeal of §573.77, regarding cease and desist procedures.

The proposed repeal is in conjunction with proposed new §575.40 as part of the agency rule review of Chapter 575. The proposed repeal will allow for better organization of Chapter 573 and Chapter 575 of the Board's rules. The subject matter regarding cease and desist procedures is addressed in proposed new §575.40. Chapter 575 generally discusses the practice and procedure rules for the Board, and therefore is a more appropriate place for a rule regarding cease and desist procedures.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the repeal is in effect there will be no foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the repeal. Mr. Helmcamp also determined that there will be no probable direct adverse effect on small businesses, micro businesses, or local or state employment. Mr. Helmcamp has also determined that there will be no probable economic cost to persons required to comply with the repeal as proposed.

Mr. Helmcamp has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit will be to have more organized Board rules.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.77. Cease and Desist Procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7563



CHAPTER 575. PRACTICE AND PROCEDURE

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §§575.2 - 575.6, 575.22, and 575.27, new §§575.7 - 575.10, 575.28 - 575.30, 575.35, 575.40, 575.50, 575.60, and 575.62, and the repeal of §575.7 and §§575.30 - 575.32 concerning practice and procedure provisions. The proposed amendments, new rules and repeal result from the Board's rule review conducted in accordance with Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Veterinary Medical Examiners contemporaneously proposes the rule review of Chapter 575.

The Board proposes the following changes to Chapter 575 that will clarify the rules of practice and procedure before the Board, including but not limited to contested case hearings, Board meetings, complaints, informal conferences, temporary license suspension proceedings and cease and desist procedures.

Language will be revised in §575.2, to clarify that items shall be filed with the Board office rather than specifically with the executive director, and shall be deemed received when received in the Board office rather than specifically received by the executive director.

Language will be revised in §575.3 providing further clarification regarding the Board procedure for counting days prescribed by this chapter or by a SOAH order, further clarification regarding the Board procedure for disputes involving the computation of time and Board procedure involving extensions of filing deadlines.

Language will be revised in §575.4 to provide gender inclusive language, with no substantive changes to the rule.

Proposed amendments to §575.5, regarding subpoenas and witness expenses, will further clarify the procedures for a party to a contested case hearing to request a subpoena. In addition, the proposed amendments will further define the means available to the Board to serve subpoenas. Also, the proposed amendments will clarify the amount available for the payment by the Board for a witness of the Board at a contested case hearing, as well as note that the pendency of a SOAH proceeding does not preclude the Board from issuing an investigative subpoena at any time.

Language will be revised in §575.6 to include gender inclusive language and delete provisions regarding Board practice and procedure regarding final decision and orders, and motions for rehearing as these issues are proposed to be discussed in §575.8 and §575.9.

Language will be repealed and revised in §575.7. The proposed repealed issue of costs of appeal is addressed in proposed new §575.10. Proposed new §575.7, regarding the presentation of a proposal for decision, will outline the presentation procedures for Proposals for Decisions in contested case hearings before the Board.

Proposed new §575.8 will outline and clarify the Board's practice and procedure regarding final decisions and orders, as previously addressed in §575.6.

Proposed new §575.9 will outline the procedure before the Board regarding motions for rehearing, as previously addressed in §575.6.

Proposed new §575.10 will state the apportionment of costs in mediations and administrative hearings, appeals and related costs.

Language will be revised in §575.22 to further clarify the actions the Board may take in reinstating a veterinary license and add gender inclusive language.

Language will be revised in §575.27 to further clarify the Board practice and procedure involving complaints against licensees and to remove subsections involving complaint logs, investigation of complaints, informal conferences, contested case hearings and contingency plans for Board members. The issue of

investigation of complaints will be addressed in proposed new §575.28. The issue of informal conferences and contingency plans for Board members will be addressed in proposed new §575.29. The issue of Board procedure regarding contested case hearings will be addressed in proposed new §575.30.

Proposed new §575.28 will restate the Board's procedure involving investigations conducted by the Board as removed from §575.27 and simplify the language to make the rule easier to read.

Proposed new §575.29 will restate the Board's procedure regarding informal conferences and contingency plans for Board members as removed from §575.27. In addition, the proposed new rule will allow the enforcement committee's designee to notify parties of the dismissal of a complaint, advise the licensee of the alleged violations and offer a settlement, or inform the licensee of their right to an administrative hearing. The proposed rule provides further clarification of the informal settlement conference procedure before the Enforcement Committee, including providing for additional negotiations and allowing for communications with Board members on the Enforcement Committee in the settlement process.

Language will be repealed and revised in §575.30. The proposed repealed issue of criminal convictions is addressed in proposed new §575.50. Proposed new §575.30 regarding contested case hearings at the State Office of Administrative Hearings (SOAH), restates the removed language from §575.27 regarding the contested case hearings before the Board. The proposed new rule replaces the requirement of filing a complaint affidavit with SOAH with filing a complaint, and further clarifies the Board's procedure with regards to filing complaints with SOAH. The proposed new rule deletes specific requirements from the Board procedure for filing with SOAH as they are redundant to rules set forth by SOAH and the Administrative Procedure Act and are more properly placed in Board policy. The proposed new rule also further delineates the presumption of receipt of a notice of hearing to the last known address registered with the Board for the licensee.

Section 575.31 will be repealed regarding alternative dispute resolutions. The proposed repeal is to allow better organization of Chapter 575. Proposed new §575.60 will discuss the issue of alternative dispute resolutions.

Section 575.32 will be repealed regarding negotiated rulemaking. The proposed repeal is to allow better organization of Chapter 575. Proposed new §575.62 will discuss the issue of negotiated rulemaking.

Proposed new §575.35 will restate the Board's procedure involving temporary license suspension proceedings before the Board which was removed from the proposed repeal of §573.67 and further clarify evidence rules for those proceedings.

Proposed new §575.40 will restate the language in proposed repealed §573.77 regarding the Board's cease and desist procedures. The proposed new rule will also state the purpose of the new rule.

Proposed new §575.50 will restate the language in proposed repealed §575.30 regarding criminal convictions by licensees.

Proposed new §575.60 will restate the language in proposed repealed §575.31 regarding alternative dispute resolutions. The proposed new rule will also add gender inclusive language.

Proposed new §575.62 will restate the language in proposed repealed §575.32 regarding negotiated rulemaking. The proposed new rule will add the requirement that the notice of a proposed new rule or amendment of an existing rule shall be made in accordance with the Administrative Procedure Act, to conform the rule to the current practice of the Board, and to add gender inclusive language.

Technical Changes

Throughout Chapter 575, numerous grammatical and technical changes will be made, such as replacing the term "Executive Director" with the term "Office of the Texas Board of Veterinary Medical Examiners" and replacing the term "Director of Enforcement" in some places with the term "Executive Director's designee." Also, statutory citation references will be updated and standardized to reflect current law and *Texas Register* formatting requirements.

Dewey E. Helmcamp, III, has determined that for each year of the first five years the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Dewey E. Helmcamp, III, has determined that for each year of the first five years the proposed rules are in effect the public benefit anticipated as a result of the proposed revisions would be ensuring that the general practice and procedures for the Board are clear and well organized and address the common issues for licensees and any other party that may appear before the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

22 TAC §§575.2 - 575.10, 575.22, 575.27 - 575.30, 575.35, 575.40, 575.50, 575.60, 575.62

The amendments and new rules are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.2. Filing of Documents.

All applications, petitions, complaints, motions, replies, answers, notices, requests for exceptions, and other documents relating to any proceeding pending or set for consideration by the Board shall be filed in the office of the Texas Board of Veterinary Medical Examiners, Austin, Texas [with the executive director]. The documents shall be deemed filed only when actually received in the office of the Texas Board of Veterinary Medical Examiners [by the executive director], accompanied by the filing fee, if any, required by statute or Board rules.

§575.3. Computation of Time.

(a) Counting days. Unless otherwise required by statute, in computing time periods prescribed by this chapter or by a SOAH order, the period shall begin to run on the day after the act, event or default in question. The day of the act, event or default on which the designated

period time begins to run is not included. The period shall conclude on the last day of the designated period, unless that day is a Saturday, Sunday or legal state or federal holiday, in which case the designated period runs until the end of the next day that is not a Saturday, Sunday or legal state or federal holiday. When these rules specify a deadline or a set number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided in this chapter or pursuant to a SOAH or board order. [In computing time periods prescribed or allowed by these rules, Board order, or any applicable statute, the day of the act, event or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal state or federal holiday, in which case the time period will end on the next day that is not a Saturday, Sunday or local state or federal holiday. Unless otherwise provided by statute or rule, the executive director or Board may for good cause extend the time period.]

(b) Dispute. Disputes regarding computation of time for periods not specified by this chapter or by a board or SOAH order will be resolved by reference to applicable law and upon consideration of agency policy documented in accordance with the Act and Board rules.

(c) Extensions. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties, order of the executive director or the ALJ if SOAH has acquired jurisdiction, upon written request filed prior to the expiration of the applicable time period. This written request must show good cause for an extension of time and state that the need is not caused by the neglect, indifference or lack of diligence of the movant.

§575.4. Conduct and Decorum.

(a) All meetings of the Board and its committees are open to the public unless such meetings are conducted in executive session in accordance with the Chapter 551, Government Code, or Chapter 801, Occupations Code.

(b) Each party, witness, attorney, or other representative shall conduct themselves [himself] in all proceedings with proper dignity, courtesy, and respect for the Board and all other parties. Disorderly conduct will not be tolerated. Members of the public shall not address Board members during meetings unless recognized by the Board's presiding officer pursuant to a published agenda item. Persons seeking to position microphones, video cameras or other equipment for the purposes of recording Board proceedings may not disrupt the meeting or disturb participants.

(c) Attorneys and other representatives of parties shall observe and practice the standards of the ethical behavior prescribed for their professions.

(d) The Board's presiding officer may exclude from a meeting any person who, after being duly warned, persists in disorderly, abusive or disruptive behavior.

§575.5. Subpoenas/[?] Witness Expenses.

(a) In any proceeding involving an alleged violation of the Veterinary Licensing Act, Chapter 801, Occupations Code, including a contested case under the Administrative Procedure Act, Chapter 2001, Government Code, the Board may compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the alleged violation.

(b) A party to a contested case hearing may request that the Board issue a subpoena or subpoena duces tecum, in accordance with Section 2001.089 of the APA, as may be hereafter amended. The requesting party must show good cause, relevancy, necessity of the testimony or documents, lack of undue inconvenience, imposition or harassment of the party required to produce the testimony or documents, and must deposit sums necessary to insure payment of expenses incident to the subpoenas. The written request shall be addressed to a sheriff or constable for service in accordance with Section 2001.089 of the APA..

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) The party requesting a subpoena duces tecum shall describe and recite with great clarity, particularity and specificity the books, records, and documents to be produced. The written request shall contain a description of the item sought, the name, address and title, if any, of the person or entity who has custody or control over the items, and the date and location at which the items are sought to be produced.

(3) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(c) A subpoena issued at the request of the Board's staff may be served [by] personally by a Board employee, [or] by certified mail, or by any other means authorized by law. [The Board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the Board's staff, but such charges may not exceed those billed by the Board for producing copies of its own records.]

(d) The Board may delegate authority to issue subpoenas to the executive director.

(e) A witness called at the request of the Board, who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the subpoena as set by the Legislature in the APA, Texas Government Code Annotated §2001.103.

[(e)] A witness called at the request of the Board shall be paid a fee of \$25 per day and reimbursed for travel expenses in the same manner as Board employees. An expert witness called at the request of the Board shall be paid a fee of \$200 per day and reimbursed for travel expenses in the same manner as Board employees.]

(f) The pendency of a SOAH proceeding does not preclude the board from issuing an investigative subpoena at any time.

§575.6. Procedures Following a Contested Case Hearing.

(a) Following issuance of a proposal for decision (PFD) in a contested case referred by the Board to the State Office of Administrative Hearings (SOAH), the parties to the hearing may file exceptions and replies to exceptions to the PFD.

(b) Any party may, within 20 days after the date of service of a proposal for decision, file with the executive director of the Board and the administrative law judge (ALJ), exceptions and briefs to the PFD. Replies to the exceptions and briefs may be filed within 15 days after the date of filing of the exceptions and briefs.

(1) A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the executive director of

the Board and the ALJ, and a copy thereto shall be served on all other parties of record by the party making the request.

(2) The ALJ will rule on all exceptions, briefs and replies and requests for extension of time and notify the parties of their [his] decision and any amendments they propose [he proposes] to the PFD.

[(e) Following receipt of the proposal for decision, including any amendments by the ALJ, the Board shall adopt an order setting out findings of fact and conclusions of law and deciding the case. The Board shall notify the parties of its decision in accordance with the Government Code, §2001.142.]

[(d) The Board may change a finding of fact or conclusion of law set out in the ALJ's proposal for decision, or may vacate or modify an order issued by that ALJ if the Board determines that:]

[(1) the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;]

[(2) a prior administrative decision on which the ALJ relied on is incorrect or should be changed; or]

[(3) a technical error in a finding of fact should be corrected. The Board shall state in writing the specific reason and legal basis for a change made under this subsection.]

[(e) Any motions for rehearing and replies to motions for rehearings must be filed in accordance with the time periods specified in the Government Code, §2001.146. Upon request by a party, the Board may grant oral argument on motions for rehearing.]

§575.7. Presentation of Proposal for Decision.

(a) Notice of oral argument. All parties and the ALJ who has issued a proposal for decision shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. Notice shall be sent by hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service to the ALJ's office and the parties' addresses of record.

(b) Arguments before the Board. The order of the proceeding shall be as follows:

(1) the ALJ shall present and explain the proposal for decision;

(2) the party adversely affected shall briefly state the party's reasons for being so affected supported by the evidence of record;

(3) the other party or parties shall be given the opportunity to respond;

(4) the party with the burden of proof shall have the right to close;

(5) board members may question any party as to any matter relevant to the proposal for decision and evidence presented at the hearing;

(6) at the end of all arguments by the parties, the board may deliberate in closed session and shall determine the charges on the merits and take action on a final decision in open session.

(c) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board's routines.

§575.8. Final Decision and Orders.

(a) Board action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to findings of fact and conclusions of law.

(1) Reasons to Change Findings of Fact and Conclusions of Law. The board is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining veterinarians. Therefore, to ensure that sound veterinary medical principles govern the decisions of the board, it is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ only when the board determines:

(A) that the ALJ did not properly apply or interpret applicable law, board rules, written policies, or prior administrative decisions;

(B) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or

(C) that a technical error in a finding of fact should be changed.

(2) Recommendations regarding the appropriate sanction. Section 801.456(a) of the Veterinary Licensing Act requires that, after receiving the ALJ's findings of fact and conclusions of law, the board may determine that a violation occurred and impose an administrative penalty. The board interprets this requirement as imposing on the board the responsibility of assessing the proper sanction. While the board welcomes the recommendations of ALJs regarding the appropriate sanction, the board does not consider the findings of fact and conclusions of law to be appropriate for stating such recommendations. Therefore, sanction recommendations in the form of findings of fact and conclusions of law are considered to be an improper application of applicable law and these rules.

(3) Changes Stated in Final Order. If the board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law, an order shall be prepared reflecting the specific reason and legal basis for each change made.

(e) Administrative finality. A final order or board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §575.9 of this title (relating to Motions for Rehearing).

§575.9. Motions for Rehearing.

Any motions for rehearing and replies to motions for rehearing must be filed in accordance with the time periods specified in the Government Code, §2001.146. Upon request by a party, the Board may grant oral argument on motions for rehearing.

§575.10. Costs of Administrative Hearings.

(a) Default Orders. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act by default, the board has the authority to assess, in addition to penalty imposed, costs of the administrative hearing.

(b) Mediation at SOAH. The costs of mediation shall be born equally by the parties, unless proof through affidavit and other reliable records such as tax returns show that a party is incapable of paying part of the costs of mediation.

(c) Trial on the Merits. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act after a trial on the merits, the board has the authority to assess in addition to the penalty imposed, the costs of the administrative hearing.

(d) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

§575.22. Reinstatement of Veterinary Licenses.

(a) A person whose license to practice veterinary medicine has been cancelled or revoked, whether by voluntary action or by disciplinary action of the Board, may after five (5) years from the effective date of such cancellation or revocation, petition the Board for reinstatement of the license, unless another time is provided in the cancellation or revocation order, or unless no provision was made in the order for reinstatement. This rule does not apply to licensees who let their licenses lapse for non-payment of renewal fees or licensees against whom a cancellation or revocation proceeding is not pending before the Board or in any other jurisdiction.

(b) The petition shall be in writing and in the form prescribed by the Board.

(c) After consideration of the petition for reinstatement, the Board may:

- (1) deny reinstatement of the license;
- (2) reinstate and probate the licensee for a specified period of time under specified conditions; or
- (3) authorize reinstatement of the licensee.

(d) [(e)] [The Board may grant or deny the petition.] If the petition is denied by the Board, a subsequent petition may not be considered by the Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(e) [(d)] The petitioner or their [his] legal representative must appear before the Board to present the request for reinstatement of the license.

(f) [(e)] The petitioner shall have the burden of showing good cause why the license should be reinstated.

(g) [(f)] In considering a petition for reinstatement, the Board may consider the petitioner's:

- (1) moral character;
- (2) employment history;
- (3) status of financial support to petitioner's [his] family;
- (4) participation in continuing education programs or other methods of staying current with the practice of veterinary medicine;
- (5) criminal history record, including felonies or misdemeanors relating to the practice of veterinary medicine and/or moral turpitude;
- (6) offers of employment as a veterinarian;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Board order revoking or canceling the petitioner's license;

(9) compliance with provisions of the Veterinary Licensing Act regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; and

(11) any physical, chemical, emotional, or mental impairment.

(h) [(g)] In considering a petition, the Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled, revoked or restricted and the impact the offense had upon the public health, safety, and welfare;

(2) the length of time since the petitioner's license was cancelled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for the petitioner to have been rehabilitated sufficiently [himself] to be able to practice veterinary medicine in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation at the request of the licensee; and

(4) other rehabilitative actions taken by the petitioner.

(i) [(h)] If the Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Board Licensing Examination during the regularly scheduled examination times. The Board may also require the petitioner to complete additional testing to assure the petitioner's competency to practice veterinary medicine.

§575.27. Complaints--Receipt[, Investigation and Disposition].

(a) Complaints against licensees.

(1) All complaints filed by the public against board licensees must be in writing on a complaint form provided by the board and signed by the complainant. If a complaint is transmitted to the board orally or by means other than in writing and the complaint alleges facts showing a continuing or imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) The board may file a complaint on its own initiative.

(3) [(2)] Complaints by the board's enforcement section shall be initiated by the opening of a complaint file.

[(3) The board shall maintain a log of complaints to whom the board sends a complaint form.]

(4) Anonymous written complaints will normally not be investigated, but may be investigated if sufficient information exists for the board to file a complaint under paragraph (2) of this subsection. [will be logged and filed for information purposes only.]

(5) The board shall utilize violation code numbers to distinguish between categories of complaints.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local

prosecutor or the attorney general for legal action, as well as addressed in §801.508 of the Occupations Code.

[(e) Investigation of complaints.]

[(1) The policy of the board is that the investigation of complaints shall be the primary concern of the board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.]

[(2) The board shall investigate complaints based on the following allegations, in order of priority:]

[(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;]

[(B) acts or omissions of a licensee that resulted in the death of an animal;]

[(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and]

[(D) all other act and omissions that do not fall within categories (A) - (C) of this paragraph.]

[(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.]

[(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.]

[(5) Upon receipt of a complaint, the director of enforcement will review it and may interview the complainant to develop additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that the investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, the investigation will proceed.]

[(6) The director of enforcement will assign an investigator to the complaint, and the investigator will send a request for patient records to the licensee. Once the investigator receives the patient records, the investigator will send a copy of the complaint to the licensee, along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the complaint.]

[(7) After the licensee's response to the complaint is received, further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, the investigator shall contact the complainant. Other persons, such as second opinion or consulting veterinarians, may be contacted. The investigator may request additional medical opinions, supporting documents, and interviews with other witnesses.]

[(8) Upon the completion of an investigation, the investigator shall prepare a report of investigation (ROI) for review by the director of enforcement, who in turn shall present the ROI to the executive director along with a conclusion as to the probability that a violation(s) exists.]

[(A) If the executive director determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to the board secretary and another board member (the "veterinarian members") who will determine whether or not the complaint should be closed, further investigation is warranted, or if the

licensee should be invited to respond to the complaint at an informal conference at the board offices.]

[(B) If the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the executive director shall forward the complaint file to a committee of the executive director, director of enforcement, the investigator assigned to the complaint, and general counsel (the "staff committee"); which shall determine whether or not the complaint should be dismissed, investigated further, or settled.]

[(C) If the veterinarian members determine that a violation has not occurred, the executive director or director of enforcement shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.]

[(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.]

[(E) A complaint considered by the staff committee shall be referred to an informal conference if:]

[(i) the staff committee determines that the complaint should not be dismissed or settled;]

[(ii) the staff committee is unable to reach an agreed settlement; or]

[(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.]

[(d) Informal conferences]

[(1) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.]

[(2) The board may be represented at the informal conference by an enforcement committee of the executive director, the veterinarian members and a public member of the board, the director of enforcement, the investigator assigned to the complaint, and the board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director or the director of enforcement shall conduct the conference.]

[(3) Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record.]

[(4) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the

enforcement committee determines that a violation has not occurred, the enforcement committee will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.]

[(5) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.]

[(6) Within 20 days after the date the licensee receives the settlement offer, the licensee must submit a written response to the board]

[(A) accepting the settlement offer and recommended disciplinary action; or]

[(B) requesting a hearing before an administrative law judge.]

[(7) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting. The board may approve the agreed order as docketed, approve the agreed order with amendments, or reject the agreed order. If the board approves the agreed order with amendments, the executive director shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the board may direct the executive director to take other appropriate action.]

[(e) Contested case hearing]

[(1) If the licensee declines the board's settlement offer, or if the licensee fails to respond timely to the offer, or if the board rejects a proposed agreed order, the investigator of the complaint shall prepare a complaint affidavit containing the allegations against the licensee. The signed and notarized complaint affidavit will then be reviewed by the board's legal counsel and signed by the executive director. The date the executive director signs the complaint affidavit is the official date of filing the complaint affidavit with the board. The complaint affidavit shall serve as the board's pleading in a contested case. At least ten (10) days prior to a scheduled hearing, the complaint affidavit and notice of hearing shall be served on the licensee as set out in subsection (e)(3)(A) of this section.]

[(2) The executive director shall submit to the State Office of Administrative Hearings (SOAH) a completed Request to Docket Case requesting SOAH to set a hearing and/or assign an administrative law judge to the contested case. The board shall provide notice of the time, date, and place of the hearing to the licensee. Following issuance of a proposal for decision by the administrative law judge, the board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The board shall promptly advise the complainant of the board's action.]

[(3) Notice of SOAH hearing; continuance and default]

[(A) The board shall send notice of a contested case hearing before SOAH to the licensee's last known address as evidenced by the records of the board. Notice shall be given by first class mail, certified or registered mail, or by personal service.]

[(B) If the licensee fails to timely enter an appearance or answer the notice of hearing, the board is entitled to a continuance at the time of the hearing. If the licensee fails to appear at the time of the hearing, the board may move either for dismissal of the case from the SOAH docket, or request that the administrative law judge issue a default proposal for decision in favor of the board.]

[(C) Proof that the licensee has evaded proper notice of the hearing may also be grounds for the board to request dismissal of the case or issuance of a default proposal for decision in favor of the board.]

[(f) Contingency. The board president shall appoint another licensee board member to assume the duties of the board secretary in the complaint review and informal conference process in the event the board secretary is unable to serve in the capacity set out in this section.]

[(g) Report to the board of dismissed complaints. The executive director or the executive director's designee [director of enforcement] shall advise the board at each scheduled meeting of the complaints dismissed since the last meeting. [The information will consist of a summary of the allegations, investigation conducted, reasons for dismissal, and file number.]

[(h) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of board investigators is not feasible or economical or where private investigators could provide valuable assistance to the board investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine without a license. Private investigators will be utilized in accordance with existing purchasing rules of the Comptroller of Public Accounts.

§575.28. Complaints--Investigations.

Investigation of complaints.

(1) Policy. The policy of the board is that the investigation of complaints shall be the primary concern of the board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other act and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign an investigator to the complaint, and the investigator will send a request for patient records to the licensee. Once the investigator receives the patient records, the investigator will send a copy of the complaint to the licensee, along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the complaint.

(7) After the licensee's response to the complaint is received, further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, the investigator shall contact the complainant. Other persons, such as second opinion or consulting veterinarians, may be contacted. The investigator may request additional medical opinions, supporting documents, and interviews with other witnesses.

(8) Upon the completion of an investigation, the investigator shall prepare a report of investigation (ROI) for review by the director of enforcement, who in turn shall present the ROI to the executive director along with a conclusion as to the probability that a violation(s) exists.

(A) If the executive director determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to the board secretary and another board member (the "veterinarian members") who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee should be invited to respond to the complaint at an informal conference at the board offices.

(B) If the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the executive director shall forward the complaint file to a committee of the executive director, director of enforcement, the investigator assigned to the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or director of enforcement or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

§575.29. Informal Conferences.

(a) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.

(b) The board may be represented at the informal conference by an enforcement committee of the executive director, the veterinarian members and a public member of the board, the director of enforcement, the investigator assigned to the complaint, and the board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director or the director of enforcement shall conduct the conference.

(c) Contingency. The board president shall appoint another licensee board member to assume the duties of the board secretary in the complaint review and informal conference process in the event the board secretary is unable to serve in the capacity set out in this section.

(d) Procedure. Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record.

(e) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the enforcement committee determines that a violation has not occurred, the enforcement committee, or their designee, will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.

(f) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director, or their designee, will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director, or their designee, must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

(g) Within the time period prescribed, the licensee must submit a written response to the board:

(1) accepting the settlement offer and recommended disciplinary action, or

(2) requesting a hearing before an administrative law judge.

(h) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

(i) The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full board for approval.

(j) Board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

(k) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting.

(l) The recommendations may be adopted, modified, or rejected by the board.

(m) If the board approves the agreed order with amendments, the executive director, or their designee, shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the board may direct the executive director to take other appropriate action.

§575.30. Contested Case Hearing at SOAH.

(a) If the licensee declines the board's settlement offer, or if the licensee fails to respond timely to the offer, or if the board rejects a proposed agreed order, the board staff may proceed with the filing of a complaint with the State Office of Administrative Hearings (SOAH). The date the board staff signs the complaint is the official date of filing the complaint with the board. The complaint shall serve as the board's pleading in a contested case. At least ten (10) days prior to a scheduled hearing, the complaint and notice of hearing shall be served on the licensee as set out in subsection (g)(1) of this section. Except in cases of temporary suspension, a complaint shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the APA, and §801.408 of the Veterinary Licensing Act.

(b) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of the board, except when board rules provide the board's interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied.

(c) The ALJ has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute

resolution procedure as provided by Chapter 2003 of the Government Code.

(d) All documents are to be filed at SOAH after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the board.

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, Section 2001.058(e), a party may file an interlocutory or interim appeal to the board requesting that the board vacate or modify an order issued by an ALJ.

(g) Notice of SOAH hearing; continuance and default

(1) The board shall provide notice of the time, date, and place of the hearing to the licensee. The notice shall include the requirements set forth in Section 2001.052 of the APA. The board shall send notice of a contested case hearing before SOAH to the licensee's last known address as evidenced by the records of the board, and presumed received by such action. Respondent is presumed to have received proper and timely notice three (3) days after the notice is sent to the last known address as evidenced by the records of the board. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(2) If the licensee fails to timely enter an appearance or answer the notice of hearing, the board is entitled to a continuance at the time of the hearing. If the licensee fails to appear at the time of the hearing, the board may move either for dismissal of the case from the SOAH docket, or request that the administrative law judge issue a default proposal for decision in favor of the board.

(3) Proof that the licensee has evaded proper notice of the hearing may also be grounds for the board to request dismissal of the case or issuance of a default proposal for decision in favor of the board.

(h) After receiving the ALJ's findings of fact and conclusions of law, the board shall rule on the merits of the charges and enter an order. The board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The board shall promptly advise the complainant of the board's action.

§575.35. Temporary License Suspension Proceedings.

(a) Annually, the president of the Board shall appoint a three-member executive disciplinary committee (EDC) consisting of the president, the Board secretary, and one public member, to determine whether a person's license to practice veterinary medicine in this state should be temporarily suspended under the Occupations Code, §801.409. The president shall serve as the chairman of the EDC, except in their absence the Board secretary shall serve as chairman. If a member of the EDC is recused, or a member is unable to attend the EDC's meeting, an alternate Board member may serve in the member's place on the EDC if the alternate was previously appointed by the president of the Board and approved by the Board.

(b) The EDC shall meet to receive information on a complaint indicating that a licensee's continued practice of veterinary medicine may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the EDC concludes that the licensee's continued practice would constitute a continuing or imminent threat to the public welfare, the EDC shall suspend the licensee's license for a temporary, stated period of time.

(c) In accordance with the APA, Section 2001.081, the determination of the EDC may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(d) In receiving information on which to base its determination of a continuing threat to the public welfare, the EDC may accept the testimony of witnesses by telephone.

(e) The EDC and the EC may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The committee members may question witnesses at the members' discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(f) The EDC may suspend a license under this section without notice or a hearing on the complaint, provided the Board's enforcement committee (EC) (established pursuant to §575.27(d) of this title (relating to Complaints--Receipt)) shall meet in an informal conference within 14 days of the date of suspension, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior to the conference.

(g) Following the informal conference, the EC shall take one of the following actions:

(1) Lift the temporary suspension and reinstate the license without conditions.

(2) Negotiate with the licensee an agreed settlement order that will lift the suspension, continue the suspension, or impose other sanctions as appropriate. The agreed order would be presented to the next available Board meeting for adoption.

(3) Prepare a complaint affidavit setting out the details of the complaint and recommended sanctions, and forward the complaint affidavit to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.

§575.40. Cease and Desist Procedures.

(a) Purpose. The purpose of a cease and desist proceeding is to determine whether a person has engaged in acts or practices that constitute the practice of veterinary medicine without a license ("respondent") in violation of Chapter 801 of the Occupations Code ("Veterinary Licensing Act") and whether the Board should issue a cease and desist order in accordance with the Veterinary Licensing Act, §801.508. The purpose of this section is to establish procedures for the handling of complaints regarding the unlicensed practice of medicine and other violations of the Veterinary Licensing Act, a rule adopted by the board, or another statute relating to the practice of veterinary medicine by a person who is not licensed by the board in accordance with Chapter 801 of the Veterinary Licensing Act.

(b) Form of Complaint. Notwithstanding §575.27 of this title (relating to Complaints--Receipt) to the contrary, a complaint of someone practicing veterinary medicine without a license does not have to be submitted on a complaint form utilized by the Board. However, a complainant must submit some form of written documentation to the Board.

(c) Staff Committee Action.

(1) Upon the Board's receipt of a complaint and after a determination that a respondent may have engaged in the unlicensed practice of veterinary medicine, a staff committee as defined in §575.27 of

this title may propose an agreed cease and desist order ("the order") to be presented to the respondent.

(2) If the respondent signs the order, it shall be effective and enforceable against the respondent upon receipt by the Board, but it shall not become final until approved by the Board.

(d) Informal Conference.

(1) If the Respondent chooses not to sign the order and requests a conference, or if the respondent does not respond after receipt of the order, the complaint shall be referred to an informal conference as defined by §575.27 of this title. If the conference committee determines that a violation of the Veterinary Licensing Act has occurred, it may propose an agreed cease and desist order with such settlement terms as it considers appropriate.

(2) If the respondent declines to sign the order, the Board may refer the complaint and investigative file to the State Office of Administrative Hearings for a contested case proceeding. Following the proceeding and issuance of a proposal for decision by the administrative law judge, the Board may take such action as appropriate.

§575.50. Criminal Convictions.

(a) In a process under Chapter 53, Occupations Code, the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a veterinarian. This subsection applies to persons who are not imprisoned at the time the Board considers the conviction.

(b) The Board shall revoke a license upon the imprisonment of a licensee following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision. A person currently incarcerated because of a felony conviction may not sit for license examination, obtain a license under the Veterinary Licensing Act, Occupations Code, Chapter 801, or renew a previously issued license to practice veterinary medicine.

(c) The Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a veterinarian, consider the factors listed in the Occupations Code, §53.022.

(d) In determining the present fitness to perform the duties and discharge the responsibilities of a veterinarian who has been convicted of a crime, the Board shall consider, in addition to the factors referenced in subsection (c) of this section, the factors listed in the Occupations Code, §53.023.

(e) The practice of veterinary medicine places the veterinarian in a position of public trust. A veterinarian practices in an autonomous role in the treating and safekeeping of animals; prescribing, administering and safely storing controlled substances; preparing and safeguarding confidential records and information; and accepting client funds. The following crimes relate to the practice of veterinary medicine. The commission of each indicates a violation of the public trust, and a lack of integrity and respect for one's fellow human beings and the community at large.

(1) any felony or misdemeanor conviction of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Veterinary Licensing Act, or other statutes regulating or pertaining to the practice or profession of veterinary medicine;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) deceptive business practices;

(5) a misdemeanor or felony offense involving:

- (A) murder;
- (B) assault;
- (C) burglary;
- (D) robbery;
- (E) theft;
- (F) sexual assault;
- (G) injury to a child or to an elderly person;
- (H) child abuse or neglect;
- (I) tampering with a government record;
- (J) animal cruelty;
- (K) forgery;
- (L) perjury;
- (M) bribery;
- (N) mail fraud;
- (O) diversion or abuse of controlled substances, dangerous drug, or narcotic; or

(P) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency of the person to be unable to perform as a licensee or to be unfit for licensure, if action by the Board will promote the intent of the Veterinary Licensing Act, Board rules, including this chapter, and the Occupations Code, Chapter 53.

(f) Notwithstanding the provisions of subsections (a) - (e) of this section, the Board shall suspend or revoke a veterinarian's license in accordance with the Occupations Code.

§575.60. Alternative Dispute Resolution.

(a) The board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes, which may include any procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code. Any ADR procedure used to resolve disputes before the board shall comply with the requirements of Chapter 2009, Government Code, and any model guidelines for the use of ADR issued by the State Office of Administrative Hearings.

(b) The board's general counsel or their designee shall be the board's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section;

(2) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(3) collect data to evaluate the effectiveness of ADR procedures implemented by the board.

(c) The board, a committee of the board, a respondent in a disciplinary matter pending before the board, the executive director, or a board employee engaged in a dispute with the executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding,

the executive director shall determine if the board will participate in ADR or proceed with the board's normal disciplinary processes.

(d) Any costs associated with retaining an impartial third party mediator, moderator, facilitator, or arbitrator, shall be borne by the party requesting ADR.

(e) Agreements of the parties to ADR must be in writing and are enforceable in the same manner as any other written contract. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by §154.073 of the Civil Practice and Remedies Code.

(f) If the ADR process does not result in an agreement, the matter shall be referred to the board for other appropriate disposition.

§575.62. Negotiated Rulemaking.

(a) Notice of a proposed new rule or amendment of any existing rule shall be made in accordance with the provisions of §2001.023 and §2001.024 of the Administrative Procedures Act.

(b) The board's policy is to encourage the use of negotiated rulemaking for the adoption of board rules in appropriate situations.

(c) The board's general counsel or their designee shall be the board's negotiated rulemaking coordinator (NRC). The NRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section, and in accordance with the Negotiated Rulemaking Act, Chapter 2008, Government Code;

(2) serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures; and,

(3) collect data to evaluate the effectiveness of negotiated rulemaking procedures implemented by the board.

(d) The board, its rules committee, or the executive director may direct the NRC to begin negotiated rulemaking procedures on a specified subject.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801464

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7563



22 TAC §§575.7, 575.30 - 575.32

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.7. Costs of Appeal.

§575.30. *Criminal Convictions.*

§575.31. *Alternative Dispute Resolution (ADR).*

§575.32. *Negotiated Rulemaking.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 305-7563



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 4. DSHS CONTRACTING RULES

SUBCHAPTER A. PROTEST PROCEDURES FOR CERTAIN DSHS PURCHASES

25 TAC §4.1

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §4.1, concerning protest procedures for resolving bidder or applicant or potential bidder or applicant protests relating to purchasing issues.

BACKGROUND AND PURPOSE

The Texas Government Code, §2155.076, Protest Procedures, requires each state agency by rule to develop and adopt protest procedures for resolving protests relating to purchasing issues. The department's Office of General Counsel (OGC) proposes new §4.1, concerning contract protest procedures. Currently, contract protest procedures reside in department policy number AA-5105, Bid Protest for Competitive Procurements and Grants. OGC proposes to place contract protest procedures in rule rather than leaving them in policy to prevent any confusion over the application of state law and rules applicable to the purchase of goods and services and to provide better public access to the protest procedures. The proposed rule is part of new Chapter 4, which will eventually contain all department contracting rules. This rule supersedes 25 Texas Administrative Code §417.60, Protest and Appeal Procedures, which is a legacy Texas Department of Mental Health and Mental Retardation rule earmarked for repeal at a later date.

SECTION-BY-SECTION SUMMARY

New §4.1 contains the process and procedure for bidder or applicant or potential bidder or applicant to protest awards or potential awards of contracts.

FISCAL NOTE

Lisa Hernandez, General Counsel, has determined that for each year of the first five-year period that the section will be in effect,

there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Hernandez has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Hernandez has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to prevent confusion over the application of state law and rules applicable to the purchase of goods and services and to provide better public access to the protest procedures.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Mary Ann Slavin, Assistant General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6971, or by email to maryann.slavin@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new section is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for

the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new section affects the Health and Safety Code, Chapter 1001 and Government Code, Chapter 531.

§4.1. Contract Protests.

(a) A potential contractor may protest a purchase award under the following circumstances:

(1) the purchase award was made under a competitive procurement method and the protestant submitted a bid or proposal that was not selected for the award; or

(2) the purchase or award was a sole source or emergency procurement and the protestant was not awarded the sole source or emergency procurement.

(b) This rule does not apply to:

(1) goods or services purchased pursuant to the Interagency Cooperation Act, Government Code, Chapter 771 or the Interlocal Cooperation Act, Government Code, Chapter 791;

(2) the lease, purchase, or lease-purchase of real property;

(3) provider enrollment agreements;

(4) interstate or international agreement executed in accordance with applicable law;

(5) a service of a public utility; or

(6) goods or services purchased under contracts or processes administered by other state agencies.

(c) The protest must meet the following requirements:

(1) be in writing and received by the Department of State Health Services (DSHS) Contract Oversight and Support Section (COS) within seven calendar days of posting of the award on the Electronic State Business Daily (ESBD);

(2) be limited to matters relating to the protestant's qualifications, the suitability of the goods or services offered by the protestant, or alleged irregularities in the procurement process; and

(3) be signed by the protestant or the protestant's authorized representative and delivered by hand, certified mail return receipt requested, facsimile or other verifiable delivery service.

(d) The protest must contain:

(1) the potential contractor's name and the specific award, including the Request for Proposal number from the ESBD, that is being protested;

(2) the legal and factual basis for the protest with specific supporting information;

(3) when applicable, how the potential contractor alleges the award violated state or federal laws or regulations regarding procurement;

(4) an explanation of the facts in disagreement; and

(5) the subsequent action the protestant is requesting.

(e) DSHS will conduct a protest review as follows:

(1) The protest must be received by the COS within the requisite time frame as stated in subsection (c)(1) of this section. If the protest is not timely received or if it does not contain the required elements, it will not be considered and the protestant will be notified in writing.

(2) The COS will forward the protest to the DSHS Protest Review Committee (PRC) with a copy to the DSHS division that conducted the procurement.

(3) The PRC may, at its sole discretion, request supplemental oral or written information from the protestant or the DSHS division if such information is necessary to evaluate the protest.

(4) The PRC will issue a written determination within 15 working days of receipt of the protest. The determination of the PRC is final.

(f) DSHS will not execute a contract for a purchase that is subject to a protest filed in accordance with this rule until DSHS provides a final written disposition of the protest. The Commissioner of DSHS or his designee may waive this requirement in the case of an award that is required by state or federal law to be completed by a particular date or in the case of a bona fide emergency as determined by the Commissioner or his designee.

(g) This section supersedes §417.60 of this title (relating to Protest and Appeal Procedures).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801428

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 458-7111 x6972

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CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER A. CONTROL OF
COMMUNICABLE DISEASES

25 TAC §97.14

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §97.14 concerning a program for reporting methicillin-resistant *Staphylococcus aureus* (MRSA), a bacteria primarily associated with skin and soft tissue infections.

BACKGROUND AND PURPOSE

The new section is necessary to comply with House Bill (HB) 1082, 80th Legislature, Regular Session, 2007, (now codified in part as Health and Safety Code, §81.0445), which requires the department to conduct a pilot program for reporting MRSA. A health authority that demonstrates an interest and possesses the resources to conduct the program will manage the program.

The department is required to select a local health authority to administer the program. The program would require (1) all clinical laboratories within the area served by the local health authority to report all cases of MRSA; (2) study the cost and feasibility of adding MRSA to the reportable disease list; (3) collect data related to the possible sources and preventions; (4) provide information about MRSA; and (5) compile and make available to the public a summary of the program. Not later than September 1, 2009, the department shall submit to the legislature a report

concerning the effectiveness of the program in tracking and reducing the number of MRSA infections.

SECTION-BY-SECTION SUMMARY

New §97.14(b) defines MRSA and MRSA infection. New §97.14(c) provides language stating that the pilot program will be conducted by health authorities serving Bexar, Brazos, Potter and Randall counties. New §97.14(c) provides language informing the medical provider and clinical or hospital laboratory staff where to report MRSA infections. New §97.14(d) provides language stating what information shall be reported for each MRSA infection. New §97.14(e) and §97.14(f) state when reporting of MRSA infections shall begin and the date when reporting will end.

FISCAL NOTE

Martha McGlothlin, Section Director, Community Preparedness Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state government as a result of enforcing or administering the section as proposed. This rule and the statute that supports it, expires in September 2009. There are fiscal implications for the three local health authorities that have agreed to conduct this reporting program. These authorities, San Antonio Metropolitan Health District, Brazos County Health District and Amarillo Bi-City-County Health District, are aware of the necessary resources needed to successfully complete the program.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be an effect on small businesses or micro-businesses required to comply with the section as proposed. It is estimated that laboratories and physician offices will make 8,800 MRSA reports during one year. From prior experiences, most (95%) of MRSA reports will be made by hospital and clinical laboratories, which are not small or micro-businesses. Only 5% or 440 reports a year will be made by small or micro-businesses. These small businesses would consist of single physician offices or physician group practices.

The primarily reporters of MRSA would be physicians in the following practices: family practice, general practice, internal medicine, infectious diseases and pediatrics. From data provided by the Texas Medical Board, 1,713 physicians in these practices are licensed in these four counties. Neither the Texas Medical Association nor the Texas Workforce Commission have data to estimate the number of small or micro-businesses that would consist of these 1,713 physicians in the four counties comprising the three health districts, but some of these physicians are in large group practices whose income would disqualify them under the definition of "small business" used in the Government Code, §2006.001.

The number of small businesses subject to the proposed rule can only be estimated. Assuming four physicians comprise a single group practice, approximately 428 group medical practices would be located in the four county areas. Each would be considered a small business.

There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT

Health district staff estimate that a person takes approximately five minutes to make a disease report. From their experiences, health district staff believe nurses in medical offices are the primary reporters. Nurses earn an average of \$25 per hour. A sin-

gle report would cost a business the amount of \$2.08. The estimated total cost to make 440 disease reports would be \$915.20.

Assuming each of the possible 428 group medical practices has 1 or 2 MRSA infections to report, the possible cost per practice would be approximately \$2.08 to \$4.16.

REGULATORY FLEXIBILITY ANALYSIS

The department considered several methods to determine the incidence of methicillin-resistant *Staphylococcus aureus* in the county populations, and minimize the impacts on small business. The department considered reducing the number of participating pilot sites, but each of the participating local health authorities expressed a strong desire to participate, and reducing the number of participants would reduce the epidemiologic advantage of comparing disease prevalence in sites with different geographic and demographic characteristics. The department also considered taking reports only from laboratories, but many labs that will diagnose MRSA in participating counties will be located outside of the counties. Therefore, the only method of achieving complete or near-complete reporting is to require physician reports. Requiring reporting from clinical and hospital laboratories and from physicians is the best and the least intrusive way to accomplish the important public health purpose of HB 1082, 80th Legislature, Regular Session, 2007, and minimizes the adverse impact of the rule on small businesses.

PUBLIC BENEFIT

Ms. McGlothlin has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The institutions and individuals responsible for reporting communicable diseases will have clear guidance on what is reportable; the public health community will have clear guidance on its legal responsibilities regarding control and exposure to communicable disease; and the general public will be better served by the department as it fulfills its responsibility to monitor communicable disease, assess and respond to the threat it presents to the public's health.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Jeff Taylor, Manager, Infectious Disease Epidemiology and Surveillance Group, Infectious Disease Control Unit, Community Preparedness Section, Division for Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street,

Austin, Texas 78756, (512) 458-7676 or by email to Jeff.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new section is authorized by Health and Safety Code, §81.004, which gives the commissioner of the department general statewide responsibility for the administration of the Communicable Disease Act and authorizes the adoption of rules necessary for its effective administration and implementation; Health and Safety Code, §81.0445, which requires the Executive Commissioner of the Health and Human Services Commission to develop rules to establish a pilot program to research and implement procedures for reporting cases of MRSA; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001.

The proposed new section affects the Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

§97.14. Methicillin-resistant *Staphylococcus aureus* (MRSA) reporting.

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.0445, requires the establishment of a pilot program for the reporting of methicillin-resistant *Staphylococcus aureus*.

(b) Definitions. For the purposes of this section, the following words and terms shall have the following meanings.

(1) Methicillin-resistant *Staphylococcus aureus* (MSRA)--*Staphylococcus aureus* for which resistance to oxacillin or cefoxitin is detected as defined by the Clinical and Laboratory Standards Institute, Wayne, Pennsylvania, for the specific test performed in the laboratory.

(2) Methicillin-resistant *Staphylococcus aureus* infection--Invasion and multiplication of MRSA in a bodily part or tissue, which produces cell or tissue injury.

(c) Where to report. The pilot program is being conducted in Bexar, Brazos, Potter and Randall counties only. These jurisdictions meet the requirements of Health and Safety Code, §81.0445(b).

(1) An administrative officer of a clinical or hospital laboratory or physicians located in Bexar County shall report MRSA to the Bexar County Health Authority.

(2) An administrative officer of a clinical or hospital laboratory or physicians located in Potter County or Randall County shall report MRSA to the Health Authority appointed by the Amarillo Bi-City-County Public Health District.

(3) An administrative officer of a clinical or hospital laboratory or physicians located in Brazos County shall report MRSA to the Brazos County Health Authority.

(d) Reportable information requirements.

(1) The information that shall be reported for each person with laboratory confirmation of an infection caused by methicillin-re-

sistant *Staphylococcus aureus* is as follows: patient name, address, telephone number, age, date of birth, sex, race and ethnicity, date of culture, site of culture, drug susceptibility results, and physician name, address, and telephone number.

(2) Additional information necessary to determine and analyze the source and possible prevention of MRSA shall also be reported if requested.

(e) When to report. Reporting shall begin on the effective date of this rule. Methicillin-resistant *Staphylococcus aureus* infection shall be reported within five working days of identification.

(f) This section expires September 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801429

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 458-7111 x6972



CHAPTER 157. EMERGENCY MEDICAL CARE

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §157.11, new §157.11, and amendments to §157.38 and §157.44, concerning the regulation of emergency medical services (EMS) providers, continuing education (CE) and instructors.

BACKGROUND AND PURPOSE

The proposed repeal and new §157.11 are necessary to implement two recent legislative changes to the Texas Health and Safety Code. The Texas Health and Safety Code, Subchapter A, §773.004 and §773.041 were amended by the 80th Legislative Regular Session, 2007, (Senate Bill 10) to remove exemptions for physician-directed ground ambulance transfers of patients and to require that all ground transport of patients by stretcher be completed by a licensed EMS provider. Texas Health and Safety Code, §773.014, was amended by the 80th Legislative Regular Session (House Bill 2827) to require the department to adopt rules requiring EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis and requiring EMS personnel to complete continuing education training in the administration of anaphylaxis treatment. New §157.11 also contains some clean-up and other new language regarding mutual aide, volunteer EMS personnel exemptions, EMS medical director documentation, signage on ambulances, EMS provider advertisements, subscription program requirements, and EMS provider operating policies.

The proposed amendments to the graphic in §157.38(c), EMS Continuing Education, added a new continuing education content area, regarding pediatrics, to maintain and enhance EMS personnel's knowledge of pediatric care. Also, continuing education hours were amended in two other areas of the graphic.

The proposed amendments to §157.44, EMS Instructor Certification, clarify instructor responsibilities, curriculum requirements, clarify and add reasons for instructor disciplinary actions and surrender of instructor certification.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 157.11, 157.38 and 157.44 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

New §157.11 requires ground ambulance transfers of patients by stretcher to be performed by licensed EMS providers. New §157.11 requires EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis and requires EMS personnel complete continuing education training in the administration of anaphylaxis treatment. New §157.11 clarifies that EMS providers licensed in adjoining states responding to provide mutual aid in Texas may be exempt from holding a Texas EMS provider license, that EMS providers staffed with 75% volunteer personnel are exempt from payment of licensing fees, that EMS providers maintain documentation of medical director contracts, that EMS providers may obtain liability insurance from a company eligible to do business in Texas, that EMS vehicles must comply with federal specifications for body types, that current EMS provider license numbers must be displayed on the provider's ambulance vehicles, that EMS providers must place notices in the local media when providers are unable to provide continuous coverage, that clarifies the location of no smoking signs inside an ambulance, and that clarifies equipment requirements when lower level EMS vehicles are authorized to provide advanced level capabilities. New §157.11 clarifies that EMS provider subscription programs requirements will include written authorization from the highest local elected officials, written authorization by the county judge or city mayor as appropriate, and documentation of the beginning and ending dates of subscription enrollment periods, and requires EMS providers to develop, implement and enforce written operating policies.

Amendments to the graphic in §157.38(c) added a new CE content area, entitled: "Pediatric." The required number of hours for the content area entitled: "Minimum Units in Content Areas" was increased and the required number of hours for the content area, entitled: "Additional Units in any Approved Category" was reduced to reconcile the total number of CE hours required for recertification eligibility.

Amendments to §157.44 eliminated EMS skills verification orientation requirements, added wording to allow for EMS instructor examination by non-department entities, clarified curriculum requirements, itemized additional EMS instructor responsibilities, replaced language outdated as a result of the department's reorganization and further defined reasons for EMS instructor disciplinary action and surrender of the EMS instructor certificate.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each calendar year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering new §157.11 as proposed. The effect on state government will be an increase in revenue to the state of \$36,040 the first calendar year and \$36,040

each year for calendar years two through five due to the additional licensing fees generated through this rule. Existing staff resources should be sufficient with an adjustment of priorities. Implementation of the proposed section will not result in any fiscal implications for local governments.

Ms. Clack determined that for each calendar year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the repeal and the remaining changes to proposed new §157.11, amendments of §157.38 or §157.44 as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has determined that new §157.11 will have a minor effect on small businesses or micro-businesses required to comply with the section as proposed. It is doubtful that many companies will have to alter their business practices significantly to comply with the sections. There are few, if any small businesses and micro-businesses that provide ground vehicle transfer services without already holding an EMS provider license under current regulations. This is because they would not be eligible for Medicare or Medicaid reimbursement without a license. However, there are some anticipated economic costs to persons who are required to comply with the sections as proposed. Some of the providers that held an EMS provider license simply to be eligible for Medicare and Medicaid reimbursement would only register one ambulance and would legally conduct non-emergency transfers with unregistered vehicles. These revisions would require a \$180 fee for each previously unregistered transfer vehicle. Those businesses that provide ground transfer services without already holding an EMS provider license under current regulations would have to obtain an EMS provider license (\$500 license fee) and obtain at least one ambulance vehicle authorization (\$180 vehicle authorization fee) before continuing its ground ambulance transfer service. Most EMS providers already carry on their ambulances medication for the treatment of anaphylaxis. Those who do not and who will now be required to do so will use approximately 12 doses per year of medications to treat anaphylaxis. The average price for anaphylaxis medication will remain at approximately \$75 per dose. There is no anticipated negative impact on local employment.

The remaining changes to new §157.11, and the amendments to §157.38 and §157.44, as noted in this preamble, will not have an adverse economic effect on small businesses.

ECONOMIC IMPACT STATEMENT

Texas Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, (House Bill 3430) to require, as a part of the rulemaking process, state agencies to prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses.

The changes to new §157.11 that will require all ground transport of patients by stretcher be done by a licensed EMS provider, using department authorized ambulances, will not effect many small businesses, because most persons that are using motor vehicles to transport patients by stretchers are already licensed as an EMS provider and are using department authorized ambulances, and thus will meet requirements of that portion of the new rule. However, there are at least fifty small businesses that transport persons or patients by stretcher that will be required to obtain an EMS provider license at a fee of \$500, if they wish to continue such specific practice. There at least fifteen small

businesses that are licensed EMS providers who use motor vehicles, not authorized by the department, to transport patients by stretcher that will be required to obtain a department authorization for those vehicles at the fee of \$180 noted in the Small and Micro-Business Impact Statement of this preamble, if they wish to continue to use those vehicles.

The changes to new §157.11 that will require EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis will not affect many small businesses, because most persons that are licensed EMS providers, already have such devices on most of its ambulances. Those who do not and who will now be required to do so will use approximately 12 doses per year of medications to treat anaphylaxis for a total annual cost of approximately \$900, because the average price for anaphylaxis medication will be approximately \$75 per dose.

REGULATORY FLEXIBILITY ANALYSIS

Texas Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, (House Bill 3430) to require, as a part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule.

Changes to new §157.11 that require the department to adopt rules that are consistent with the requirement that all ground transport of patients by stretcher be done by a licensed EMS provider, using department authorized ambulances, and rules that will require EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis are reflective of new standards mandated by recent legislative changes to the Texas Health and Safety Code, Chapter 773. Because such rule changes are mandated by the legislature, they are considered *per se* consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider other regulatory methods.

The remaining changes to new §157.11, as noted previously in this preamble, and the amendments to §157.38 and §157.44, as noted in this preamble, mainly give more clarification to the existing rules which are still consistent with the health, safety, environment and economic welfare of the state, while still accomplishing the objectives of said rules.

PUBLIC BENEFIT

Ms. Clack has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is through department inspections to ensure licensed EMS provider compliance with department health and safety regulations.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rule amendments, repeal and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Steve Janda, Manager, Office of EMS / Trauma Systems Coordination, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700 or by email to Steve.Janda@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The repeal affects the Health and Safety Code, Chapters 773 and 1001; and Government Code, Chapter 531.

§157.11. Requirements for an EMS Provider License.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801477

Lisa Hernandez
General Counsel

Department of State Health Services

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 458-7111 x6972



25 TAC §157.11

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The new rule affects the Health and Safety Code, Chapters 773 and 1001; and Government Code, Chapter 531.

§157.11. Requirements for an EMS Provider License.

(a) Purpose: Acquiring, issuing, and maintaining an EMS Providers License.

(b) Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) Candidates for an initial EMS provider license shall submit a completed application to the department.

(2) A nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle to be operated under the license shall accompany the application.

(3) An EMS provider holding a valid license or authorization from another state; whose service area adjoins the State of Texas; who has in place a written mutual aid agreement, with a licensed Texas EMS provider, and who when requested to do so by a licensed Texas EMS provider, responds into Texas for emergency mutual aid assistance, may be exempt from holding a Texas EMS provider license, but will be obligated to perform to the same medical standards of care required of EMS providers licensed in Texas.

(4) A fixed-wing or rotor-wing air ambulance provider, appropriately licensed by the state governments of New Mexico, Oklahoma, Arkansas, or Louisiana may apply for reciprocal issuance of a provider license. A nonrefundable administrative fee of \$500 per provider in addition to a nonrefundable fee of \$180 for each EMS aircraft to be operated in Texas under the reciprocal license shall accompany the application.

(5) An EMS provider that provides emergency prehospital care is exempt from payment of department licensing and authorization fees if the firm is staffed with at least 75% volunteer personnel, has no more than five full-time staff or equivalent, and if the firm is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service. An EMS provider who compensates a physician to provide medical supervision may be exempt from the payment of department licensing and authorization fees if all other requirements for fee exemption are met.

(6) Required Documents that shall accompany a license application.

(A) Document verifying volunteer status, if applicable.

(B) Map and description of service area, a list of counties and cities in which applicant proposes to provide primary emergency service and a list of all station locations with address and telephone and facsimile transmission numbers for each station.

(C) Declaration of organization type and profit status.

(D) Declaration of Provider Name.

(E) Declaration of Ownership.

(F) Declaration of Administrator.

(G) Copies of Doing Business Under Assumed Name Certificates (DBA).

(H) Completed EMS Personnel Form.

(I) Staffing Plan that describes how the EMS provider will provide continuous coverage for the service area defined in documents submitted with the EMS provider application.

(J) Completed EMS Vehicle Form.

(K) Declaration of medical director and a copy of the signed contract or agreement with a physician who is currently licensed in the State of Texas, in good standing with the Texas Medical Board, in compliance Texas Medical Board Rules, particularly regarding Emergency Medical Services as outlined in 22 Texas Administrative Code, Part 9, Texas Medical Board, Chapter 197, and in compliance with Title 3 of the Texas Occupations Code.

(L) Completed Medical Director Information Form.

(M) Treatment and Transport Protocols approved and signed by the medical director.

(N) A listing of equipment, supplies and medications; approved and signed by the medical director.

(O) Description of how the provider will conduct Quality Assurance.

(P) Plan for how the provider will respond to disaster incidents including mass casualty situations.

(Q) Copies of written Mutual Aid and/or Inter-local Agreements with EMS providers.

(R) Documentation as required for subscription or membership program, if applicable.

(S) Certificate of Insurance, provided by the insurer, identifying the department as the certificate holder and indicating at least minimum motor vehicle liability coverage for each vehicle to be operated and professional liability coverage. If applicant is a government subdivision, submit evidence of financial responsibility by self-insuring to the limit imposed by the tort claims provisions of the Texas Civil Practice and Remedies Code.

(i) The applicant shall maintain motor vehicle liability insurance as required under the Texas Transportation Code.

(ii) The applicant shall maintain professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient.

(T) The applicant shall provide copies of vehicle titles, vehicle lease agreements, copies of exempt registrations if applicant is a government subdivision, or an affidavit identifying applicant as the owner, lessee, or authorized operator for each vehicle to be operated under the license.

(c) EMS Provider License.

(1) License.

(A) Applicants who have submitted all required documents and who have met all the criteria for licensure will be issued a provider license to be effective for a period of two years from the date of issuance.

(B) Licenses shall be issued in the name of the applicant.

(C) License expiration dates may be adjusted by the department to create licensing periods less than two years for administrative purposes.

(D) An application for an initial license or for the renewal of a license may be denied to a person or legal entity who owns or who has owned any portion of an EMS provider service or who operates/manages or who/which has operated/managed any portion of an EMS provider service which has been sanctioned by or which has a proposed disciplinary action/sanction pending against it by the department or any other local, state or federal agency.

(E) The license will be issued in the form of a certificate which shall be prominently displayed in a public area of the provider's primary place of business.

(F) An EMS Provider License issued by the department shall not be transferable to another person or entity.

(2) Vehicle Authorizations.

(A) The department will issue authorizations for each vehicle to be operated by the applicant which meets all criteria for approval as defined in subsection (d) of this section.

(B) Vehicle Authorizations shall be issued for the following levels of service, and a provider may operate at a higher level of service based on appropriate staffing, equipment and medical direction for that level. Vehicle authorizations will include a level of care designation at one of the following levels:

- (i) Basic Life Support (BLS);
- (ii) BLS with Advanced Life Support (ALS) capability;
- (iii) BLS with Mobile Intensive Care Unit (MICU) capability;
- (iv) Advanced Life Support (ALS);
- (v) ALS with MICU capability;
- (vi) Mobile Intensive Care Unit (MICU);
- (vii) Air Medical:
 - (I) Rotor wing; or
 - (II) Fixed wing; and
 - (viii) Specialized.

(C) Change of Vehicle Authorization. To change an authorization to a different level the provider shall submit a request with appropriate documentation to the department verifying the provider's ability to perform at the requested level. A fee of \$30 shall be required for each new authorization requested. The provider shall allow sufficient time for the department to verify the documentation and conduct necessary inspections before implementing service at the requested authorization level.

(D) Vehicle Authorizations are not required to be specific to particular vehicles and may be interchangeably placed in other vehicles as necessary. The original Vehicle Authorization for the appropriate level of service shall be prominently displayed in the patient compartment of each vehicle:

(E) Vehicle Authorizations are not transferable between providers.

(F) A replacement of a lost or damaged license or authorization may be issued if requested with a nonrefundable fee of \$10.

(3) Declaration of Business Names and Administration.

(A) The applicant shall submit a list of all business names under which the service is operated. If the applicant intends to operate the service under a name or names different from the name for which the license is issued, the applicant shall submit certified copies of assumed name certificates. The Department shall not issue licenses with an identical name.

(B) A change in the name which the service is operated will require a new application and a prorated fee as determined by the department. A new provider number will be issued.

(C) Name of Administrator must be declared. The applicant shall submit a notarized document declaring the full name of the chief administrator, his/her mailing address and telephone number to whom the department shall address all official communications in regard to the license.

(d) Vehicles.

(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation safely and efficiently.

(2) EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must allow all required procedures to be carried out in a safe and effective manner.

(3) Unless otherwise approved by the department, EMS vehicles must meet the minimum ambulance vehicle body type, dimension and safety criteria as specified in the "Federal Specification for ambulances," KKK-A-1822, published by the U.S. General Services Administration.

(4) All vehicles shall have an environmental system capable of heating or cooling, in accordance with the manufacturer specifications, within the patient compartment at all times when in service and which allows for protection of medication, according to manufacturer specifications, from extreme temperatures if it becomes environmentally necessary. The provider shall provide evidence of an operational policy which shall list the parenteral pharmaceuticals authorized by the medical director and which shall define the storage and/or FDA recommendations. Compliance with the policy shall be incorporated into the provider's Quality Assurance process and shall be documented on unit readiness reports.

(5) When response-ready or in-service, EMS vehicles shall have operational two-way communication capable of contacting appropriate medical resources.

(6) When response-ready or in-service, EMS vehicles shall be in compliance with all applicable federal, state and local requirements.

(7) All EMS vehicles shall have the name of the provider and a current department issued EMS provider license number prominently displayed on both sides of the vehicle in at least 2 inch lettering. The license number should have the letters TX prior to the license number. This requirement does not apply to fixed wing aircraft.

(e) Substitution, replacement and additional vehicles.

(1) The provider shall notify the department within five business days if the provider substitutes or replaces a vehicle. No fee is required for a vehicle substitution or replacement.

(2) The provider shall notify the department if the provider adds a vehicle to the provider's operational fleet. A vehicle authorization request shall be submitted with a non-refundable vehicle fee prior to the vehicle being placed into service.

(f) Staffing Plan Required.

(1) The applicant shall submit a completed EMS Personnel Form listing each response person assigned to staff EMS vehicles by name, certification level, and department issued certification/license identification number.

(2) An EMS provider responsible for an emergency response area that is unable to provide continuous coverage within the declared service areas shall publish public notices in local media of its inability to provide continuous response capability and shall include the days and hours of its operation. The EMS provider shall notify all the public safety-answering points and all dispatch centers of the days and hours when unable to provide coverage. The EMS provider shall submit evidence that reasonable attempts to secure coverage from other EMS providers have been made.

(g) Minimum Staffing Required.

(1) BLS--When response-ready or in-service, authorized EMS vehicles operating at the BLS level shall be staffed at a minimum with two emergency care attendants (ECAs).

(2) BLS with ALS capability--When response-ready or in-service below ALS two ECAs. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT)-Intermediate and at least an EMT.

(3) BLS with MICU capability--When response-ready or in-service below MICU two ECAs. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(4) ALS--When response-ready or in-service, authorized EMS vehicles operating at the ALS level shall be staffed at a minimum with one EMT Basic and one EMT-Intermediate.

(5) ALS with MICU capability--When response-ready or in-service below MICU shall require one EMT-Intermediate and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(6) MICU--When response-ready or in-service, authorized EMS vehicles operating at the MICU level shall be staffed at a minimum with one EMT Basic and one EMT-Paramedic.

(7) Specialized--When response-ready or in-service, EMS vehicles authorized to operate for a specialized purpose shall be staffed with a minimum of two personnel appropriately licensed and/or certified as determined by the type and application of the specialized purpose and as approved by the medical director and the department.

(8) For air ambulance staffing requirements refer to §157.12(f) of this title (relating to Rotor-wing Air Ambulance Operations) or §157.13(g) of this title (relating to Fixed-wing Air Ambulance Operations).

(9) As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.

(h) Treatment and Transport Protocols Required.

(1) The applicant shall submit written delegated standing orders for patient treatment and transport (protocols) which have been approved and signed by the provider's medical director.

(2) The protocols shall have an effective date and an expiration date which correspond to the inclusive dates of the provider's EMS license.

(3) The protocols shall address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff, may provide patient care on behalf of the provider and/or in the provider's EMS vehicles.

(4) The protocols shall address the use of all required, additional, and/or specialized medical equipment, supplies, and pharmaceuticals carried on each EMS vehicle in the provider's fleet.

(5) The protocols shall identify delegated procedures for each EMS Certification or license level utilized by the provider.

(6) The protocols shall indicate specific applications, including geographical area and duty status of personnel.

(i) EMS Equipment, supplies, medical devices, parenteral solutions and pharmaceuticals.

(1) The EMS provider shall submit a list, approved by the medical director and fully supportive of and consistent with the protocols, of all medical equipment, supplies, medical devices, parenteral solutions and pharmaceuticals to be carried. The list shall specify the quantities of each item to be carried and shall specify the sizes and types of each item necessary to provide appropriate care for all age ranges appropriate to the needs of their patients. The quantities listed shall be appropriate to the provider's call volume, transport times and restocking capabilities.

(2) All critical patient care equipment, medical devices, and supplies shall be clean and fully operational. All critical patient care battery powered equipment shall have spare batteries or an alternative power source, if applicable.

(3) All solutions and pharmaceuticals shall be in date and shall be stored and maintained in accordance with the manufacturers and/or U.S. Federal Drug Administration (FDA) recommendations.

(4) The requirements for air ambulance equipment and supplies are listed in §157.12(h) of this title or §157.13(h) of this title.

(j) The following items shall be present on each EMS in-service vehicle and on, or immediately available for, each response-ready vehicle in quantities, sizes and types as specified in the equipment list as required in subsection (i) of this section:

(1) Basic Life Support:

(A) oropharyngeal airways;

(B) portable and vehicle mounted suction;

(C) bag valve mask units, oxygen capable;

(D) portable and vehicle mounted oxygen;

(E) oxygen delivery devices;

(F) dressing and bandaging materials;

(G) rigid cervical immobilization devices;

(H) spinal immobilization devices;

(I) extremity splints;

(J) equipment to meet special patient needs;

(K) equipment for determining and monitoring patient vital signs, condition or response to treatment;

(L) pharmaceuticals, as required by medical director protocols;

(M) An External Cardiac Defibrillator appropriate to the staffing level;

(N) A patient-transport device capable of being secured to the vehicle; and

(O) An epinephrine auto injector or similar device capable of treating anaphylaxis.

(2) Advanced Life Support:

(A) all required BLS equipment;

(B) advanced airway equipment;

(C) IV equipment and supplies; and

(D) pharmaceuticals as required by medical director protocols.

(3) MICU:

(A) all required BLS and ALS equipment;

(B) cardiac monitor/defibrillator; and

(C) pharmaceuticals as required by medical director protocols.

(4) BLS with ALS Capability:

(A) all required BLS equipment, even when in service or response ready at the ALS level; and

(B) all required ALS equipment, when in service or response ready at the ALS level.

(5) BLS with MICU Capability:

(A) all required BLS equipment, even when in service or response ready at the MICU level; and

(B) all required MICU equipment, when in service or response ready at the either the MICU level.

(6) ALS with MICU Capability:

(A) all required ALS equipment, even when in service or response ready at the MICU level; and

(B) all MICU equipment, when in service or response ready at the MICU level.

(7) In addition to medical supplies and equipment:

(A) a complete and current copy of written protocols approved by the medical director; with a current and complete equipment, supply, and medication list;

(B) operable emergency warning devices;

(C) personal protective equipment for the crew to include at least:

(i) protective, non-porous gloves;

(ii) medical eye protection;

(iii) medical respiratory protection;

(iv) medical protective gowns or equivalent; and

(v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) portable, battery-powered flashlight (not a pen-light);

(G) a mounted fire extinguisher;

(H) "No Smoking" signs posted in the patient compartment and cab of vehicle; and

(I) emergency response guide book (for hazardous materials).

(8) As justified by specific patient needs, and when qualified personnel are available, providers may appropriately utilize equipment in addition to that which is required by their designation levels. Equipment used must be consistent with protocols and/or patient-specific orders and must correspond to personnel qualifications.

(k) National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

(1) an accreditation self-study;

(2) a copy of formal accreditation certificate; and

(3) any correspondence or updates to or from the accrediting organization which impact the provider's status.

(l) Subscription or Membership Services. An EMS provider who operates or intends to operate a subscription or membership program for the provision of EMS within the provider service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. In order to obtain department approval for a subscription or membership program, the EMS provider shall:

(1) Obtain written authorization from the highest elected official (County Judge or Mayor) of the political subdivision(s) where subscriptions will be sold. Written authorization must be obtained from each County Judge if subscriptions are to be sold in multiple counties.

(A) The County Judge must provide written authorizations if subscriptions sold across an entire county.

(B) The Mayor may provide written authorization if subscriptions are sold exclusively within the boundaries of an incorporated town or city.

(2) Submit a copy of the contract used to enroll participants.

(3) The EMS provider shall maintain a current file of all advertising for the service. Submit a copy of all advertising used to promote the subscription service within ten days after the beginning of any enrollment period.

(4) Comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service.

(5) Provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be on a department bond form and be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self insurance in an amount equal to the funds to be subscribed if the provider is a function of a governmental entity.

(6) Not deny emergency medical services to non-subscribers or subscribers of non-current status.

(7) Be reviewed at least every year; and the subscription program may be reviewed by the department at any time.

(8) Furnish a list after each enrollment period with the names, addresses, dates of enrollment of each subscriber, and subscription fee paid by each subscriber.

(9) Furnish the department beginning and ending dates of enrollment period(s). Subscription service period shall not exceed one year. Subscribers shall not be charged more than a prorated fee for the remaining subscription service period that they subscribe for.

(10) Furnish the department with the total amount of funds collected each year.

(11) Not offer membership nor accept members into the program who are Medicaid clients.

(m) Responsibilities of the EMS provider. During the license period, the provider's responsibilities shall include:

(1) assuring that all response-ready and in-service vehicles are maintained, operated, equipped and staffed in accordance with the requirements of the provider's license;

(2) assuring the existence of and adherence to a quality assurance plan which shall, at a minimum, include:

(A) the standard of patient care and the medical director's protocols;

(B) pharmaceutical storage;

(C) readiness inspections;

(D) preventive maintenance;

(E) policies and procedures;

(F) complaint management; and

(G) patient care reporting and documentation.

(3) monitoring the quality of patient care provided by the service and personnel and taking appropriate and immediate corrective action to insure that quality of service is maintained in accordance with the existing standards of care;

(4) ensuring that all personnel are currently certified or licensed by the department;

(5) assuring that all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the provider name. A provider may utilize an alternative identification system in incident specific situations that pose a potential for danger if the individuals are identified by name;

(6) assuring the confidentiality of all patient information in compliance with all federal and state laws;

(7) assuring that Informed Treatment/Transport Refusal forms are obtained from all patients refusing service, or documenting incidents when an Informed Treatment/Transport Refusal form cannot be obtained;

(8) assuring that patient care reports are completed accurately on all patients;

(9) assuring that patient care reports are provided to emergency facilities receiving the patients;

(A) the report shall be accurate, complete and clearly written or computer generated;

(B) the report shall document, at a minimum, the patient's name, condition upon arrival at the scene; the prehospital care provided; the patient's status during transport, including signs, symptoms, and responses during the transport; the call initiation time; dispatch time; scene arrival time; scene departure time; hospital arrival time; and, the identification of the EMS staff;

(C) whenever operationally feasible, the report shall be provided to the receiving facility at the time the patient is delivered; and/or

(D) if in a response-pending status, an abbreviated written report shall be provided at the time the patient is delivered and a full written or computer generated report shall be delivered to the facility within one business day of the delivery of the patient.

(10) assuring that all requested patient records are made promptly available to the medical director or department when requested;

(11) assuring that current protocols, current equipment, supply and medication lists, and the correct original Vehicle Authorization at the appropriate level are maintained on each response-ready and in-service vehicle;

(12) monitoring and enforcing compliance with all policies;

(13) assuring provisions for the appropriate disposal of medical and/or biohazardous waste materials;

(14) assuring ongoing compliance with the terms of first responder agreements;

(15) assuring that all documents, reports or information provided to the department are current, accurate and complete;

(16) assuring compliance with all federal and state laws and regulations and all local ordinances, policies and codes at all times;

(17) assuring that all response data required by the department is submitted in accordance with the department's requirements;

(18) assuring that, whenever there is a change in the name of the provider or the service's operational assumed name, the printed name on the vehicles are changed accordingly within 30 days of the change;

(19) assuring that the department is notified in five business days whenever:

(A) a vehicle is substituted or replaced;

(B) there is a change in the level of service;

(C) there is a change in the declared service area;

(D) there is a change in the official business mailing address;

(E) there is a change in the physical location of the business;

(F) there is a change in the physical location of patient report file storage, to assure that the department has access to these records at all times; and

(G) there is a change of the administrator.

(20) assuring that when a change of the medical director has occurred the department be notified within one business day;

(21) develop, implement and enforce written operating policies and procedures required under this chapter and/or adopted by the licensee. Assure that each employee is provided a copy upon em-

ployment and whenever such policies and/or procedures are changed. A copy of the written operating policies and procedures shall be made available to the department on request. Policies at a minimum shall adequately address:

- (A) personal protective equipment;
- (B) immunizations available to staff;
- (C) infection control procedures;
- (D) communicable disease exposure;
- (E) emergency vehicle operation;

(F) credentialing of new response personnel before being assigned primary care responsibilities. The credentialing process shall include as a minimum:

(i) a comprehensive orientation session of the services policies and procedures, treatment and transport protocols, safety precautions, and quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person, if operationally feasible.

(G) appropriate documentation of patient care; and

(H) vehicle checks, equipment, and readiness inspections.

(22) assuring that manufacturers' operating instructions for all critical patient care electronic and/ or technical equipment utilized by the provider are available for all response personnel;

(23) assuring that the department is notified within five business days of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever:

(A) the vehicle is rendered disabled and inoperable at the scene of the occurrence; or

(B) there is a patient on board.

(24) assuring that the department is notified within 1 business day of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever there is personal injury or death to any person;

(25) maintaining motor vehicle liability insurance as required under the Texas Transportation Code;

(26) maintaining professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient;

(27) insuring continuous coverage for the service area defined in documents submitted with the EMS provider application;

(28) responding to requests for assistance from the highest elected official of a political subdivision or from the department during a declared emergency or mass casualty situation;

(29) assuring all EMS personnel receive continuing education training on the provider's anaphylaxis treatment protocols. The provider shall maintain training records to include date, time, and location of such training for all it's EMS personnel;

(30) immediately notify the department in writing when operations cease in any service area;

(31) assure that all patients transported by stretcher must be in a department authorized EMS vehicle; and

(32) develop or adopt and then implement policies, procedures and protocols necessary for its operations as an EMS provider, and enforce all such policies procedures and protocols.

(n) License renewal process.

(1) It shall be the responsibility of the provider to request license renewal application information.

(2) Providers shall submit a completed application, all other required documentation and a nonrefundable license renewal fee, no later than 90 days prior to the expiration date of the current license.

(A) If a complete application is received by the department 90 or more days prior to the expiration date of the current license that is to be renewed, the applicant shall submit a non refundable application fee of \$400 per provider plus \$180 for each EMS vehicle.

(B) If a complete application is received by the department 60 or more days, but less than 90 days, prior to the expiration date of the current license that is to be renewed, the applicant shall submit a non refundable application fee of \$450 per provider plus \$180 for each EMS vehicle.

(C) If a complete application is received by the department less than 60 days prior to the expiration of the current license the applicant shall submit a nonrefundable application fee of \$500 per provider plus \$180 for each EMS vehicle.

(D) If the application for renewal is received by the department after the expiration date of the current license, a notice will be sent to the provider explaining they are not eligible to renew, but the license application will be processed and new provider license number issued after satisfying all requirements.

(E) An EMS provider may not operate after the license has expired.

(o) Provisional License.

(1) The department may issue a provisional license if an urgent need exists in a service area if the department finds that the applicant is in substantial compliance with the provisions of this section and if the public interest would be served. A provisional license shall be effective for no more than 45 days from the date of issuance.

(A) A provider may apply for a provisional license by submitting a written request and a nonrefundable fee of \$30.

(B) A provisional license issued by the department may be revoked at any time by the department, with written notice to the provider, if the department finds that the provider is failing to provide appropriate service in accordance with this section or that the provider is in violation of any of the requirements of this title.

(2) An EMS provider may not operate after the license has expired.

(p) Advertisements.

(1) Any advertising by an EMS provider shall not be misleading, false, or deceptive. If an EMS provider advertises in Texas and/or conducts business in Texas by regularly transporting patients to, from, or within Texas, the provider shall be required to have a Texas EMS Provider License.

(2) An EMS provider shall not advertise levels of patient care which cannot be provided at all times. The provider shall not use a name, phrase or language that could mislead the public to believe a higher level of care is being provided.

(3) An EMS provider that has more than five paid staff, but is composed of at least 75% volunteer EMS personnel may advertise as a volunteer service.

(q) Surveys/Inspections.

(1) All initial applicants shall be required to have an initial compliance survey by the department that evaluates all aspects of an applicant's proposed operations including clinical care components and an inspection of all vehicles prior to the issuance of a license.

(2) At renewal, or randomly, or in response to a complaint, or for other good reason the department may conduct an unannounced compliance survey to include inspection of a provider's vehicles, operations, and/or records to insure compliance with this title at any time, including nights or weekends.

(3) If a re-survey/inspection to insure correction of a deficiency is conducted, the provider shall pay a nonrefundable fee of \$30 per vehicle needing a re-inspection.

(r) Specialty Care Transports. A Specialty Care Transport is defined as the interfacility transfer by a department licensed EMS provider of a critically ill or injured patient requiring specialized interventions, monitoring and/or staffing. To qualify to function as a Specialty Care Transport the following minimum criteria shall be met:

(1) Qualifying Interventions:

(A) patients with one or more of the following IV infusions: vasopressors; vasoactive compounds; antiarrhythmics; fibrinolytics; tocolytics; blood or blood products and/or any other parenteral pharmaceutical unique to the patient's special health care needs; and

(B) one or more of the following special monitors or procedures. mechanical ventilation; multiple monitors, cardiac balloon pump; external cardiac support (ventricular assist devices, etc); any other specialized device, vehicle or procedure unique to the patient's health care needs.

(2) Equipment. All specialized equipment and supplies appropriate to the required interventions shall be available at the time of the transport.

(3) Minimum Required Staffing. One currently certified EMT-Basic and one currently certified or licensed paramedic with the additional training as defined in paragraph (4) of this subsection; or, a currently certified EMT-Basic and a currently certified or licensed paramedic accompanied by at least one of the following: a Registered Nurse with special knowledge of the patient's care needs; a certified Respiratory Therapist; a licensed physician; or, any licensed health care professional designated by the transferring physician.

(4) Additional Required Training for Certified/Licensed Paramedics: Evidence of successful completion of post-paramedic training and appropriate periodic skills verification in management of patients on ventilators, 12 lead EKG and/or other critical care monitoring devices, drug infusion pumps, and cardiac and/or other critical care medications, or any other specialized procedures or devices determined at the discretion of the provider's medical director.

(s) For all applications and renewal applications, the department (or the board) is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200801478

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆
SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.38

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects the Health and Safety Code, Chapters 773 and 1001; and Government Code, Chapter 531.

§157.38. *Continuing Education.*

(a) - (b) (No change.)

(c) Content requirements. Candidates at each certification level shall, at a minimum, accrue department-approved CE in the following content areas.

Figure: 25 TAC §157.38(c)

[Figure: 25 TAC §157.38(e)]

(d) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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◆ ◆ ◆
SUBCHAPTER D. EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFICATION

25 TAC §157.44

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and

EMS instructors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects the Health and Safety Code, Chapters 773 and 1001; and Government Code, Chapter 531.

§157.44. Emergency Medical Service Instructor Certification.

(a) General.

(1) (No change.)

(2) An instructor must be currently certified [as] at the [least an] emergency medical technician (EMT) level or higher and may not instruct knowledge or skills above the [his] current level of personnel certification.

(3) Instructor certification is dependent on the individual's EMS personnel certification and is subject to the same status as that personnel certification. If the department imposes disciplinary action in accordance with §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License) or §157.36 of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License), the action shall also be imposed automatically and immediately on the individual's instructor [instructor's] certification.

(b) Certification. To obtain certification, a candidate shall:

(1) (No change.)

(2) have active Texas EMS personnel certification;

(3) complete a training program using an instructor training curriculum approved by the department; or

(4) successfully complete a methods of teaching course or other type of instructor training course approved by the department; the course completed shall be a minimum of 40 hours and all requirements shall be completed within one year of the completion date on the course certificate, and the department may exempt those applicants who are already certified in those courses; or

(5) an instructor candidate who has a degree in secondary or higher education, a secondary teaching certificate or is currently certified as an EMS Instructor in another state shall submit documentation to verify the degree, teaching certificate or out-of-state instructor certificate;

(6) ~~[(4)]~~ submit an application to the department with a nonrefundable fee of \$30 to the department, except a fee shall not be required if compensation is not received for instructing training courses or programs; and a course completion document from a department-approved instructor course; and

(7) ~~[(5)]~~ pass the instructor examination administered or approved [conducted] by the department.

(8) ~~[(e)]~~ The instructor candidate who does not pass the department-administered exam may have one opportunity to retest by submitting the retest application and \$30 retest fee, if applicable. The retest must be completed no later than one year after the course completion date. The candidate who fails the retest must complete another instructor course to become eligible for instructor certification.

(c) [(d)] Currently certified instructors shall be considered to have met the qualifications in this section.

~~(d) [(e)]~~ Period of certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of subsection (b) of this section shall be certified as an instructor for two years commencing on the date of issuance of the certificate.

(e) [(f)] Responsibilities. An instructor shall have the following responsibilities:

(1) conduct [conducting] classroom and laboratory sessions in accordance with lesson objectives as assigned by the course coordinator;

(2) conduct [conducting] skills proficiency verifications and other student evaluations as assigned by the course coordinator;

(3) assist [assisting] the course coordinator in preparing and maintaining records and performing other duties necessary to insure the integrity, efficiency and effectiveness of the course; [-]

(4) adhere to the curriculum standards as referenced in §157.32 of this title (relating to Emergency Medical Services Education Program and Course Approval);

(5) adhere to the standards outlined in the department's EMS Education and Training Manual;

(6) provide supervision and oversight for assigned courses;

(7) function as the liaison between the students, the course coordinator, the program, and the department;

(8) ensure that the facilities, including the classroom and lab areas, are conducive to a positive learning environment;

(9) ensure that equipment and supplies are clean, in working order, and of adequate quality and quantity to provide a positive learning environment;

(10) properly administer and maintain integrity of the skills proficiency verifications and other student evaluations during a course;

(11) properly and accurately inform students of the requirements, processes, and paperwork necessary for Texas EMS certification or licensure;

(12) properly and accurately inform students of the laws and rules regulating EMS, including requirements for staffing Texas EMS vehicles; and

(13) maintain the overall classroom setting and/or course presentation to ensure the integrity, efficiency, and/or effectiveness of the course.

(f) [(g)] Recertification.

(1) Prior to the expiration of a certificate, the department shall send a notice of expiration to the certificant at the address shown in the current records of the department. It is the responsibility of EMS personnel to notify the department of any change of address.

(2) If a certificant has not received notice of expiration from the department 30 days prior to the expiration, the certificant shall request an application for recertification from the department or download an application from the Internet. Failure to apply for recertification shall result in expiration of the certificate.

(3) To be eligible for recertification, the instructor shall meet recertification requirements during the latest instructor certification period:

(A) maintain active status EMS certification; and

(B) submit the application for recertification and a non-refundable fee of \$30.

(4) After verification by the department of the information submitted, the candidate who meets the requirements of this section shall be recertified for two years commencing on the day following the expiration of the current certificate.

(g) ~~[(h)]~~ Late recertification.

(1) An application for renewal of a certificate shall be considered late if:

(A) the application and nonrefundable fee are received after the most recent certificate has expired; or~~[-]~~

(B) all requirements for recertification are not met prior to the end of the most recent certification period.

(2) An instructor who has not recertified prior to the end of his most recent certification period is not certified.

(h) ~~[(i)]~~ Recertification. To be eligible for recertification, the candidate shall meet the following:

(1) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection ~~(b)(6)~~ ~~[(b)(4)]~~ of this section;

(2) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection ~~(b)(6)~~ ~~[(b)(4)]~~ of this section.

(3) A candidate must complete all the requirements for recertification no later than one year after the expiration of the most recent certificate.

(4) After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of this subsection shall be recertified for two years commencing on the day of issuance of a certificate.

(5) A candidate whose certification is expired more than one year must meet the requirements of subsection (b) of this section including the completion of another initial course to be certified.

(i) ~~[(j)]~~ Disciplinary action.

(1) Emergency suspension. The ~~department~~ ~~[bureau chief of the Bureau of Emergency Management]~~ may issue an emergency order to suspend an instructor if the ~~department~~ ~~[bureau chief]~~ has reasonable cause to believe continued activity of the individual constitutes an imminent danger ~~[a threat]~~ to the public health or safety.

(A) An emergency suspension shall be effective immediately without a hearing or written notice to the certificate holder. Notice to the certificate holder shall be established on the date that a copy of the signed emergency suspension order is sent to the address shown in the current records of the department, or by return receipt. Notice shall also be sent to any sponsoring entity.

(B) If a written request for a hearing is received from the certificate holder within 15 days of the date of notice, the department shall conduct a hearing not later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from a disciplinary action related to the hearing shall be in ac-

cordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(2) Certification suspension ~~[Suspension]~~ or revocation, or application denial. The department may suspend or revoke a certification or deny an application for certification ~~[- An instructor's certification may be suspended or revoked]~~ for, but not limited to, the following reasons:

(A) failing to maintain a current and active Texas ~~[active status]~~ EMS personnel certification at the appropriate level;

(B) failing to comply with the responsibilities of an instructor as in subsection ~~(e)~~ ~~[(f)]~~ of this section;

(C) falsifying or assisting another person in falsifying an application for EMS certification;

(D) falsifying or assisting another person in falsifying a program approval application, a self-study, a course approval application, or any supporting documentation;

(E) falsifying or assisting another person in falsifying a course completion certificate or any other document that records or verifies course activity and/or is a part of the course record;

(F) compromising department or program standards for verification of skills proficiency or falsifying proficiency verification records;

(G) obtaining, or attempting to obtain, or assisting another person in obtaining or attempting to obtain certification or recertification by fraud, deception, falsification, theft, misappropriation, coercion, forgery, or misrepresentation;

~~[(G)] assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception or misrepresentation;~~

(H) failing to complete and submit student documents within the established time frames;

(I) compromising or failing to maintain the order, discipline and fairness of a department-approved course or program;

(J) delivering or allowing inadequate class presentations;

(K) compromising an examination or examination process administered or approved by the department;

(L) cheating or assisting another in cheating on an EMS examination, other evaluation or any other activity offered or conducted by the department, a training program approved by the department, or a provider licensed by the department;

(M) accepting any benefit to which there is no entitlement or benefits in any manner through fraud, deception, falsification, misrepresentation, theft, misappropriation or coercion;

(N) failing to maintain appropriate policies, procedures and safeguards to ensure the safety of students, fellow instructors or other class participants;

(O) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;

(P) issuing a check to the department which is returned unpaid;

(Q) failing to maintain education course records for initial or continuing education (CE) courses;

(R) demonstrating an unwillingness or inability to comply with the Health and Safety Code and rules adopted thereunder;

(S) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code, or the rules adopted thereunder, or failing to report a violation;

(T) committing any violation during a probationary period; ~~and~~

(U) functioning or attempting to function as an instructor during a period of suspension shall be cause for revocation of the instructor certification; ~~[-]~~

(V) failing to report a violation of the Health and Safety Code, Chapter 773, or the rules adopted thereunder;

(W) failure to notify the department when any current student or certified or licensed program employee is arrested or convicted for any crime, upon the instructor's discovery of such;

(X) conviction of a crime which directly relates to the profession of EMS personnel or EMS educators as described in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);

(Y) received a deferred adjudication or deferred prosecution to resolve any criminal charge against the candidate or certificant, which relates to the candidate's or certificant's ability to carry out EMS duties and/or the responsibilities of an EMS Instructor;

(Z) unprofessional conduct such as, but not limited to the following:

(i) retaliation;

(ii) discrimination;

(iii) verbal or physical abuse; or

(iv) inappropriate physical or sexual contact.

(AA) failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately carry out the duties of an EMS Instructor;

(BB) failing to meet standards as required in this section;

(CC) previous conduct on the part of the applicant during the performance of duties relating to the responsibilities of EMT personnel or an EMS Instructor that is contrary to accepted standards of conduct as described in Chapter 157 of this title;

(DD) disciplinary action relating to a certificate or license issued in another state; and/or

(EE) misrepresenting any requirements for certification or licensure.

(3) Notification. If the department proposes to take disciplinary action against an EMS instructor, the certificant shall be notified at the address shown in the current records of the department. The notice must state the alleged facts or conduct warranting the action and state that the certificant has an opportunity to request a hearing.

(A) The certificant may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the bureau chief. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(B) If the certificant does not request a hearing, after being sent the notice of opportunity, the certificant waives the opportunity for a hearing and the department shall implement its proposal.

(4) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(5) Reapplication.

(A) Two years after the revocation, denial, or the voluntary surrender of an instructor certification while disciplinary action is pending, an individual may petition the department, in writing, for the opportunity to reapply for certification. Expiration of a certificate during the suspension period shall not affect the two-year waiting period required before a petition can be submitted.

(B) The department shall evaluate the petition and may allow or deny the opportunity to submit an application for recertification. The petitioner bears the burden of proving fitness for certification.

(C) In evaluating a petition for permission to reapply for certification the department shall consider, but is not limited to, the following issues:

(i) the likelihood of a repeat of the actions or inactions that led to revocation;

(ii) the petitioners overall record as an instructor;

(iii) letters of support or recommendation;

(iv) letters in protest or nonsupport of the petition; and

(v) the need for the services of an instructor in a given area.

(D) The petitioner shall be notified of the department's decision to allow or deny the submission of reapplication within 60 days of the request.

~~[(E) An instructor whose certificate expires during a suspension or revocation period may not petition to reapply for certification until the end of the suspension or revocation period.]~~

(j) Surrender of a certificate. Surrender of a certificate shall not deprive the department of jurisdiction in regard to disciplinary action against the certificant. An individual who wishes to surrender his or her certification prior to the expiration of the certificate may do so by:

(1) completing a Surrender of Certificate statement; and

(2) in the event that a disciplinary action is pending or reasonably imminent, the certificant must acknowledge that the surrender constitutes a plea of "no contest" to the allegations upon which the disciplinary action is predicated.

(k) For all applications and renewal applications, the department ~~[(or the board)]~~ is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION SUBCHAPTER C. ADVISORY COMMITTEES

34 TAC §1.300, §1.301

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §1.300, concerning Public Education Integrity Task Force, and §1.301, concerning "e-Texas" Citizens' Commission. The repeal is necessary because both of these advisory committees have been abolished. Pursuant to §1.300(c), Duration, the Public Education Integrity Task Force was abolished on December 31, 2000. Pursuant to §1.301(c), Duration, the "e-Texas" Citizens' Commission was abolished on June 30, 2001. The proposed repeal is a result of a rules review conducted by the comptroller of Texas Administrative Code, Title 34, Part 1, Chapter 1, Subchapter C. The rule review was performed under Texas Government Code, §2001.039, and concluded that the reasons for initially adopting the rules no longer exist.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rules will in streamlining the Texas Administrative Code. The proposed repeal would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the repeal may be submitted to Don Neal, Assistant General Counsel, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Texas Government Code, §§403.011, 2110.005, 2110.008 and 2001.039. Section 403.011 outlines the general powers of the comptroller, including without limitation, the authority to adopt regulations the comptroller considers essential to the speedy and proper assessment and collection of state revenues and the authority to suggest plans for the improvement and management of the general revenue. Section 2110.005 and §2110.008 require a state agency to adopt rules regarding the purposes, duties, and duration of advisory committees. Section 2001.039 authorizes a state agency to repeal rules that are no longer necessary as a result of a rule review performed under that section.

The repeal implements Texas Government Code, §2001.039.

§1.300. *Public Education Integrity Task Force.*

§1.301. *"e-Texas" Citizens' Commission.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

Amendment to §4.1 is necessary to ensure that the Federal Hazardous Material Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through April 1, 2008.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on April 10, 2008, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Government Code, §411.018, and Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments.

Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-7509 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through April 1, 2008 [~~October 1, 2007~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through April 1, 2008 [~~October 1, 2007~~].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to

Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801403

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 424-2135



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.13 - 4.15, 4.17

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §§4.11, 4.13 - 4.15, and 4.17 concerning Regulations Governing Transportation Safety.

The first amendment proposed for §4.11 updates the rule so that it reflects April 1, 2008 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter. A second amendment to §4.11 is necessary to clarify that the rules adopted also ensure that all drivers of commercial motor vehicles are properly qualified to operate these vehicles. A third amendment to §4.11 is necessary to clarify that motor carriers are only subject to these rules when operating a regulated commercial motor vehicle. A fourth amendment to §4.11 is necessary to clarify that a medical examination certificate can be issued for a period of less than 24 months by a medical examiner. Two additional amendments proposed for §4.11 correct grammatical errors in the text.

The amendment proposed for §4.13 updates the text to reflect changes contained in Senate Bill 330, as passed by the 80th Texas Legislature, pertaining to the locations where a non-commissioned employee of the department can conduct commercial motor vehicle inspections.

Amendments to §4.14 are necessary in order to further clarify certain general and data timeliness requirements for municipalities and counties participating in the commercial vehicle inspection program.

An amendment to §4.15 is necessary to allow for delivery of safety rating correspondence to a motor carrier at the last known location, address, electronic mail address, or facsimile number for the motor carrier. The second amendment to §4.15 clarifies that only compliance reviews resulting from a request to change a safety rating where the safety rating has been final for less than 6 months will be processed in accordance with the expe-

dated timelines specified in the rule. The third amendment to §4.15 eliminates the term "streamlined compliance review" and replaces it with the term "follow-up compliance review". The fourth amendment to §4.15 allows the department to extend the final effective date of a safety rating for a motor carrier transporting passengers or hazardous materials for up to 30 days when the motor carrier has submitted evidence of corrective actions. The renumbering of certain paragraphs is also necessitated due to the proposed text of the amendments.

An amendment to §4.17 is necessary to allow the department to notify motor carriers of claims using electronic mail, provided the department verifies receipt by a responsible individual. A second amendment to §4.17 is necessary to set the deadline for responding to or appealing a notice of claim at 20 calendar days rather than 20 business days, which is consistent with the requirements of Texas Transportation Code, §644.153(e).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §§2001 et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on April 10, 2008, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rules §§4.11, 4.13 - 4.15, and 4.17 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-7509 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through April 1, 2008 ~~[October 1, 2007]~~. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through April 1, 2008 ~~[October 1, 2007]~~. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely; ~~[and]~~

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and,

(5) ~~[(4)]~~ the minimum levels of financial responsibility for [required to be maintained by] motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section;

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety for vehicles operating in intrastate commerce;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31; ~~[and]~~

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper; ~~and[-]~~

(13) off-road motorized construction equipment includes but is not limited to motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; and

(D) a vehicle transporting hazardous material requiring a placard.

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States.

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating in intrastate commerce and to for-hire interstate motor carriers exempt from economic regulation. The term "operating authority" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643, for vehicles operating in intrastate commerce, or Texas Transportation Code, Chapters 643 or 645, for for-hire interstate motor carriers exempt from economic regulation. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapters 643 or 645, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this chapter. All costs associated with the towing and storage of a vehicle and load declared out-of-service under subsection (c)(2) shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, Part 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) [(4)] Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a commercial motor vehicle inspection site [fixed-site facility], or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service

using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 50,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States;

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port;

(E) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million;

(F) a municipality with a population of 60,000 or more any part of which is located in a county with a population of 750,000 or more and in two or more counties with a combined population of one million or more; or

(G) a municipality with a population of at least 34,000 that is located in a county that borders two or more states.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States, or

(B) a county with a population of 2.2 million or more.

(6) A constable, or deputy constable, designated under Texas Transportation Code, §621.4015, meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway within the county a motor vehicle subject to Texas Transportation Code, Chapter 644.

(7) A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) Training and Certification Requirements.

(1) Minimum standards. Certain peace officers from the municipalities and counties specified in subsection (a) of this section before being certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Texas Intrastate Roadside Inspection Course (Part C), if initial certification occurs on or after January 1, 2006, or if recertification is required under subsection (c)(4) of this section; and

(C) participate in an on-the-job training program following the North American Standard Roadside Inspection Course with a certified officer and perform a minimum of 32 level I inspections. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(2) Hazardous materials. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles containing non-bulk quantities of hazardous materials. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(3) Cargo Tank Specification. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 16 level I inspections on vehicles transporting hazardous materials in cargo tanks. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(4) Other Bulk Packaging. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the Other Bulk Packaging requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Hazardous Materials Inspection Course;

(C) successfully complete the Cargo Tank Inspection Course; and

(D) successfully complete the Other Bulk Packaging Course.

(5) Passenger Vehicle. Certain peace officers from the municipalities and counties specified in subsection (a) of this section and eligible to enforce the passenger vehicle requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete the Passenger Vehicle Inspection Course; and

(C) participate in an on-the-job training program following this course with a certified officer and perform a minimum of 8 level I or V inspections on passenger vehicles such as motor coaches/buses. These inspections should be completed as soon as practicable, but no later than six months after course completion.

(6) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities and counties the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(7) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all peace officers attending the training course, including the peace officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each peace officer, municipality, or county the cost of providing the training course(s).

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) Successfully complete the required annual certification training; and

(B) Perform a minimum of 32 Level I inspections per calendar year.

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year. Level I inspections on vehicles containing non-bulk quantities of hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in cargo tanks per calendar year. Level I inspections on cargo tank vehicles transporting

hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(E) If the officer is certified to perform other bulk packaging inspections, the officer can use Level I inspections performed on vehicles transporting hazardous materials in other bulk packaging to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph. Level I, II or V inspections on vehicles transporting hazardous materials in other bulk packaging may also be used to satisfy the eight inspections required by subparagraph (D) of this paragraph.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year. Level I inspections on passenger vehicles may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(2) In the event an officer does not meet the requirements of subsection (c) of this section, his or her certification shall be suspended by the department. Such suspension action will be initiated by the director or the director's designee.

(3) To be recertified, after suspension, an officer shall pass the applicable examinations which may include the North American Standard Roadside Inspection, the Hazardous Materials Inspection Course, the Cargo Tank Inspection Course, the Other Bulk Packaging Inspection Course, and/or the Passenger Vehicle Inspection Course and repeat the specified number of inspections with a certified officer.

(4) Any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (b) of this section.

§4.14. Municipal and County Certification Requirements.

(a) Certain peace officers from an authorized municipality or county may be trained and certified to enforce the federal safety regulations provided the municipality or county:

(1) executes a Memorandum of Understanding with the department concerning the working policies and procedures of the inspection program whereby the resources of all agencies will be maximized, duplication of efforts will be minimized, and uniformity in the inspection program will be maintained;

(2) implements a program that ensures only their certified officers are conducting the inspections, utilizing only department approved forms, and following the inspection program guidelines approved by the department;

(3) implements a program that ensures their officers perform the required number of inspections annually and successfully complete the required annual certification training to maintain the officers' certification;

(4) agrees to immediately suspend, from performing commercial vehicle inspection and enforcement activities, authorized in this chapter, any officer that fails to maintain their certification or that fails to perform the inspections following the guidelines approved by the department;

(5) agrees to notify the department within 10 days of a change in an officer's certification and provides a list to the department by January 31st of each year of the officers that have been suspended and are no longer certified;

(6) provides all roadside inspection data to the department through electronic systems that are compatible with the department's

system within ~~10~~ 15 business days of the inspection, and forwards paper copies immediately thereafter;

(7) agrees to forward crash reports involving commercial motor vehicles to the department no later than ~~10~~ 30 days after the date of completion of the crash investigation; ~~and~~

(8) agrees to investigate and determine whether a correction to the data needs to be made when that data is challenged; to notify the motor carrier and the department in writing of the results of the investigation within ~~10~~ working days; and then to make any needed corrections and forward the corrected reports to the department immediately; ~~and~~(-)

(9) acknowledges that the department may conduct random in-person observation of inspections conducted in order to ensure that the officers maintain practical proficiency in the commercial vehicle inspection program.

(b) Non-compliance ~~[Substantial non compliance]~~ with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality or county, including timeliness of reporting data, will constitute grounds to decertify the municipality's or county's authority to enforce the federal safety regulations.

(c) The failure of a municipality or county to show activity to the department within a six (6) month period will constitute grounds to decertify the municipality or county.

(d) Each municipality or county that has peace officers trained and certified to enforce the federal safety regulations shall be required to update and renew their Memorandum of Understanding with the department every two years on a staggered schedule to be determined by the department. If the initial Memorandum of Understanding with the department does not have an effective date shown, then the effective date shall be the date of acceptance by the department.

(e) In determining whether a municipality meets the population threshold requirements of Texas Transportation Code, §644.101, the department will use either:

(1) the most recent federal decennial census, or

(2) a resolution or proclamation issued under the authority of the governing body of the municipality that attests and certifies that the population of the municipality, including the authorized extraterritorial jurisdiction of the municipality, meets or exceeds the population threshold amounts listed in Texas Transportation Code, §644.101.

§4.15. Safety Audit Program.

(a) The rules in this subsection, as authorized by Texas Transportation Code, §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) Definitions specific to the Safety Audit Program are as follows:

(A) Compliance Review means an on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability means an evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent Hazard means any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, Part 385.5 and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4.

(F) Unsatisfactory Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k) and the state equivalents contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4.

(G) For the purposes of safety ratings, Final Departmental Decision is defined as:

(i) the letter notifying the carrier of a satisfactory safety rating, issued under paragraph (4)(D) of this subsection;

(ii) the letter notifying the motor carrier of a conditional safety rating on the expiration of the time period in paragraph (4)(D)(ii) of this subsection, unless this changed earlier as a result of the department granting a request to change the safety rating or a departmental review;

(iii) the letter notifying the motor carrier of a final unsatisfactory safety rating issued under paragraph (4)(D)(iii) of this subsection; or

(iv) the letter notifying the motor carrier of a decision on a safety rating as a result of a request for a change of the safety rating or a departmental review.

(2) Inspection of Premises.

(A) Authority to Inspect. An officer or a non-commissioned employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code, §644.155.

(B) Entry of Premises. The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) by presenting to the motor carrier;

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code, §644.104, is liable to the state for a civil penalty not to exceed \$1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code, §644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(3) Compliance Review Audits. A Compliance Review will be conducted based upon the following criteria:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles which are substantiated by documentation. Complaints for the purpose of this criterion include involvement in a fatality accident or the receipt of a 24-hour out-of-service notification based on violation(s) of Title 49, Code of Federal Regulations, Parts 392.4 or 392.5 or Texas Transportation Code, §522.101;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an Unsatisfactory Safety Rating from the immediately previous Compliance Review;

(D) requests from the legislature and state or federal agencies;

(E) request for a safety rating determination or a change to a safety rating determination; or

(F) a hazardous material incident as described in §4.1(b)(4) of this title (relating to Transportation of Hazardous Materials).

(4) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, Part 385.7. The following safety ratings will be assigned:

(i) Satisfactory Safety Rating;

(ii) Conditional Safety Rating; or

(iii) Unsatisfactory Safety Rating.

(C) The provisions of Title 49, Code of Federal Regulations, Part 385.13 relating to "unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts" is hereby adopted by the department and is applicable to intrastate motor carriers except that intrastate motor carriers transporting more than 15 passengers or hazardous materials are prohibited from operation on the 61st calendar day after notice of the proposed unsatisfactory safety rating; all other intrastate motor carriers are prohibited from operation on the 76th calendar day after notice of the proposed unsatisfactory safety rating.

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 30 business days of the close out date of the compliance review.

(i) Notice of a satisfactory safety rating will be sent by regular U.S. Mail, or by personal delivery, and is final upon receipt or mailing.

(ii) Notice of a proposed conditional safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible, and will include a list of those items for which immediate corrective action must be taken. Unless changed by the department following a request for a change of safety rating or a department review, the conditional safety rating will become final without further notice on the 61st calendar day after notice of the proposed conditional safety rating for motor carriers transporting more than 15 passengers or hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations, and on the 76th calendar day after notice of the proposed conditional rating for all other motor carriers. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed conditional safety rating, the conditional safety rating may become final before the department can complete its review.

(iii) Notice of a proposed unsatisfactory safety rating shall be sent by certified mail, registered mail, personal delivery, or another manner of delivery to the motor carrier's last known location, address, electronic mail address, or facsimile number [that records the receipt of the notice by the person responsible], and will include a list of those items for which immediate corrective action must be taken. Within 5 business days of the expiration of the time periods set out in paragraph (4)(C) of this subsection, the department will provide written notification of the final unsatisfactory safety rating and an order to cease all intrastate transportation, as provided in Title 49, Code of Federal Regulations, Part 385.13, by certified mail, registered mail, personal delivery, or another manner of delivery to the motor carrier's last known location, address, electronic mail address, or facsimile number [that records the receipt of the notice by the person responsible]. Electronic mail may be used for safety rating correspondence. If the motor carrier requests a change of safety rating or a departmental review more than 15 days after the notice of proposed unsatisfactory safety rating, the unsatisfactory safety rating may become final before the department can complete its review.

(iv) A final unsatisfactory safety rating and order to cease all intrastate transportation, described in clause (iii) of this subparagraph, will become effective on the date specified in the notice of proposed safety rating unless extended by the department, in writing, under subparagraph (G)(v) or (vi) of this paragraph. The department will make and document reasonable efforts to provide a copy of the written final unsatisfactory safety rating and order to cease intrastate transportation to the carrier. However, if the notice of proposed safety rating was received by the motor carrier and adequately describes the effective date and consequences of failure to improve the motor carrier's safety rating, failure of the department to serve the final unsatisfactory safety rating and order to cease intrastate transportation will not delay its effective date.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, Part 385.13 will be subject to a civil suit filed by the attorney general from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) A request for a change in or a departmental review of a safety rating must be submitted in writing to: Texas Department of Public Safety, Manager-Motor Carrier Bureau, P.O. Box 4087, Austin, Texas 78773-0521. Such request(s) must meet the requirements provided for in this subsection.

(G) Change to Safety Rating based on Corrective Actions. A motor carrier that has taken action to correct the deficiencies

that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(i) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in Title 49 Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the department to consider.

(ii) The department will make a final determination on the request for change based upon the documentation the motor carrier submits, a follow-up [streamlined] compliance review and any additional relevant information. The review will be conducted by the director's designee(s); the follow-up [streamlined] compliance review will be conducted by a field compliance review investigator.

(iii) The department will perform reviews of requests made by motor carriers with a proposed ~~[or final]~~ "unsatisfactory" or "conditional" safety rating in the following time periods after receipt of the motor carrier's request: within 30 calendar days for motor carriers transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials; or within 45 calendar days for all other motor carriers.

(iv) When a request for a change to a safety rating, based on corrective actions, is filed before a "conditional" or "unsatisfactory" safety rating has been final for 6 months or less, the timeline in paragraph (a)(4)(G)(iii) of this subsection is applicable for conducting a follow-up compliance review. All other requests for a change to a safety rating will be scheduled on a priority basis, however, the abbreviated timeline for completion as specified in paragraph (a)(4)(G)(iii) of this subsection is no longer applicable.

(v) ~~[(iv)]~~ The filing of a request for a change to a proposed or final safety rating under this section does not stay the 60 calendar day period specified in this subsection for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to the Federal Motor Carrier Safety Regulations and state regulations and the department cannot make a final determination within the 60 calendar day period, the period before the proposed safety rating becomes final may be extended for up to 30 ~~[+0]~~ calendar days at the discretion of the department.

(vi) ~~[(v)]~~ The department may allow a motor carrier with a proposed rating of "unsatisfactory" (except those transporting passengers in commercial motor vehicles or placardable quantities of hazardous materials) to continue to operate in intrastate commerce for up to 60 calendar days beyond the 75 calendar days specified in the proposed rating, if the department determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 76th day after the date of the notice of the proposed "unsatisfactory" rating.

(vii) ~~[(vi)]~~ If the department determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in Title 49, Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4, the department will notify the motor carrier in writing of its upgraded safety rating. An upgraded safety rating is final upon notification.

(viii) ~~[(vii)]~~ If the department determines that the motor carrier has not taken all the corrective actions required, or that

its operations still fail to meet the safety standard and factors specified in Title 49, Code of Federal Regulations Parts 385.5 and 385.7, and equivalent state regulations contained in Texas Transportation Code Chapters 522 and 644, and 37 TAC, Chapter 4, the department will notify the motor carrier in writing. Any extension of the time period before an unsatisfactory safety rating becomes effective under paragraph (4)(G)(iv) or (v) of this subsection will expire upon receipt of this notice.

(ix) [(viii)] Any motor carrier whose request for change to a safety rating is denied in accordance with this subsection may request a departmental review under the procedures of paragraph (4)(H) of this subsection. The motor carrier must make the request within 90 calendar days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any departmental review.

(H) Departmental Review of Safety Rating. A motor carrier may request the department to conduct a departmental review if it believes the department has committed an error in assigning its proposed safety rating in accordance with Title 49, Code of Federal Regulations, Part 385.15(c), Texas Transportation Code Chapter 644, or 37 TAC, Chapter 4 or its final safety rating in accordance with Title 49, Code of Federal Regulations, Part 385.11(b), Texas Transportation Code Chapter 644, or 37 TAC, Chapter 4.

(i) The motor carrier's request must explain the error it believes the department committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(ii) If a motor carrier has received a notice of a proposed conditional or unsatisfactory safety rating, it should submit its request within 15 business days from the date of the notice. This time frame will allow the department to issue a written decision before the safety rating becomes final and any prohibitions outlined in paragraph (4)(C) of this subsection take effect. Failure to request within this 15 business day period may prevent the department from issuing a final decision before such prohibitions take effect.

(iii) The motor carrier must make a request for a departmental review within 90 calendar days of either the proposed or final safety rating issued in accordance with this subsection, or within 90 calendar days after denial of a request for a change in a safety rating in accordance with paragraph (4)(G) of this subsection.

(iv) The department may ask the motor carrier to submit additional data and attend a conference in Austin, Texas to discuss the safety rating. If the motor carrier does not provide the information requested or does not attend the conference, the department may dismiss its request for review. The review will be conducted by the director's designee(s).

(v) The department will notify the motor carrier in writing of its decision following the departmental review. The department will complete the review within 30 calendar days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating; or within 45 calendar days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" or "conditional" safety rating.

(I) A final safety rating constitutes a final agency decision. Any review of such decision is subject to Texas Government Code Chapter 2001. Judicial review is subject to the substantial evidence rule under Texas Government Code, §2001.174.

(b) Imminent Hazard.

(1) Regardless of whether an Unsatisfactory Safety Rating has become final under subsection (a)(4)(C) of this section, if the Manager of the Motor Carrier Bureau, or his designee, determines that a motor carrier's operations constitute an Imminent Hazard, the Manager or his designee shall issue an Order to Cease all or part of the motor carrier's commercial motor vehicle operations.

(2) In making any such order, no restrictions shall be imposed on any employee or employer beyond that required to abate the hazard.

(3) Opportunity for review of any such order shall be in the manner described in §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review).

(4) For purposes of all enforcement the department is authorized to take, any operations in violation of an Imminent Hazard determination will be treated as operating with a final unsatisfactory rating issued under subsection (a)(4)(D)(iii) of this section.

(c) Release of Safety Rating Information.

(1) The safety rating assigned to a motor carrier will be made available to the public upon request.

(2) Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

§4.17. Notification and Hearing Processes.

(a) Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter as described in §4.16(a)(4) of this title (relating to Administrative Penalties, Payments, Collection and Settlement of Penalties).

(2) The notification may be submitted to the motor carrier's last known address as reflected in the records of the department by certified mail, return receipt requested, or personal service, or another manner of delivery that records the receipt of the notice by the person responsible. Electronic mail may be used provided the department verifies receipt by the person responsible. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier shall respond within 20 calendar [business] days of receipt of the claim letter with one of the following options:

(A) Payment of the claim in the full amount as outlined in the claim letter; or

(B) Request, in writing, to make installment payments; or

(C) Request, in writing, an informal hearing; or

(D) Request, in writing, an administrative hearing.

(4) A request under paragraph (3)(C) or (D) of this subsection must contain the following:

(A) A concise statement of the issues to be presented at the hearing, including the occurrence of the violations, the amount of the penalty, or both;

(B) defenses the carrier asserts to the department's claim; and

(C) supporting documents to show defenses and/or financial condition of the carrier.

(5) A request under paragraph (3)(C) of this subsection that does not contain the information required in paragraph (4) of this subsection may, after notice and a reasonable opportunity to correct the defect, be set for an administrative hearing rather than an informal hearing, at the discretion of the department.

(b) Informal hearing.

(1) If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee.

(2) An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) After the conclusion of the informal hearing, the hearing officer will issue a Memorandum of Decision, which will be provided to the motor carrier. The Memorandum of Decision will contain the following:

(A) a statement of findings by the hearing officer, including a statement of dismissal of charges, modification of penalties, or affirmation of penalties; and

(B) if the penalties are modified or affirmed, the Memorandum of Decision will be accompanied by a revised claim letter requiring the motor carrier to respond within 20 calendar [business] days of receipt of claim letter with one of the following options:

(i) Payment of the claim in the full amount as outlined in the claim letter; or

(ii) Request to make installment payments; or

(iii) Request an administrative hearing before the State Office of Administrative Hearings.

(c) Administrative Hearing.

(1) If the motor carrier requests an administrative hearing, as required by subsection (a)(3)(D) or (b)(3)(B)(iii) of this section, the department shall request an administrative hearing before the State Office of Administrative Hearings. The department will provide written notice by certified mail, return receipt requested, or by personal service of such action to the motor carrier. The administrative law judge for the State Office of Administrative Hearings shall issue a proposal for decision setting out the judge's findings of fact, conclusions of law and recommendations in accordance with agency rules and statutes, including a recommendation regarding the award and amount of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state.

(2) The director may adopt those findings and make it part of the director's order; or the director may, pursuant to §2001.058(e), Government Code, increase or decrease the amount of the penalty recommended by the administrative law judge. Notice of the director's order and proposal for decision shall be given to the affected person as required by Chapter 2001, Government Code, and must include a statement that the person is entitled to seek a judicial review of the order. Before the 31st calendar day after the date the director's order becomes final as provided in §2001.004, Government Code, the person must:

(A) pay the penalty in full;

(B) pay the penalty in full and file a petition for judicial review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(C) without paying the penalty, file a petition for review contesting:

(i) the occurrence of the violation(s);

(ii) the amount of the penalty; or

(iii) both the occurrence of the violation(s) and the amount of the penalty.

(3) A contested case under this subsection will be governed by Texas Government Code, Chapter 2001, subchapters C and D, Texas Transportation Code, §644.153, and 37 TAC, Chapter 29 of this title (relating to General Rules of Practice and Procedure), and not by Title 49, Code of Federal Regulations, Part 386, Subparts D and E.

(d) A final department decision is subject to judicial review under the substantial evidence rule, Texas Government Code, §2001.174. For purposes of collection of the administrative penalty, Final Departmental Decision is defined as:

(1) the most recent claim letter issued to a motor carrier who fails to request an informal hearing or an administrative hearing within 20 calendar [business] days of receipt of the Notice of Claim; or

(2) the most recent claim letter issued to a motor carrier who fails to pay or becomes delinquent in the payment of an administrative penalty as outlined in §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties); or

(3) a Final Order issued by the director as a result of an administrative hearing as outlined in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2008.

TRD-200801402

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 424-2135



SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.37

The Texas Department of Public Safety proposes an amendment to Chapter 4, Subchapter C, §4.37, concerning Acceptance of Out-of-State Commercial Vehicle Inspection Certificate. Amendment to §4.37 is necessary in order to remove the State of Arkansas from the list of jurisdictions certified by the Federal Motor Carrier Safety Administration as meeting the requirements of Title 49, Code of Federal Regulations, §396.23.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated cost to individuals who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-7509.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§4.37. Acceptance of Out-of-State Commercial Vehicle Inspection Certificate.

(a) Texas-registered commercial vehicles. Acceptance of commercial vehicle inspection certificates issued outside of Texas. A valid commercial vehicle inspection certificate issued in a jurisdiction having an inspection program that has been certified by the Federal Motor Carrier Safety Administration under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1) as meeting the requirements of §396.17 is acceptable on a Texas-registered commercial vehicle.

(b) Out-of-state registered commercial vehicles. Commercial vehicles required to be registered in Texas will be required to be inspected at an official commercial vehicle inspection station and obtain a vehicle identification certificate, Form VI-30-A, before the registration process can be completed. Valid out-of-state inspection certificates will not be honored on commercial vehicles required to be registered.

(c) Jurisdictions certified under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1). The following jurisdictions have been certified by the Federal Motor Carrier Safety Administration as meeting the requirements of Title 49, Code of Federal Regulations, §396.23(b)(1): Alabama (LPG Board), [Arkansas,] California, Connecticut, District of Columbia, Hawaii, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio (Bus Inspection Program), Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, or any of the ten Canadian Provinces and the Yukon Territory.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801470

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 27, 2008

For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §232.4, §232.5

The State Board of Educator Certification withdraws the proposed amendments to §232.4 and §232.5 which appeared in the February 1, 2008, issue of the *Texas Register* (33 TexReg 828).

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801476

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,
Texas Education Agency

State Board for Educator Certification

Effective date: March 17, 2008

For further information, please call: (512) 475-1497

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts §1.23, 2008 State of Texas Low Income Housing Plan and Annual Report (SLIHP), with changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 19) and will be republished. Section 1.23 adopts by reference the SLIHP. The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2007 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.072 of the Texas Government Code.

The TDHCA Board of Directors approved the final 2008 SLIHP at the March 2008 board meeting. The 2008 SLIHP will become effective 20 days after being filed in the Office of the Secretary of State.

No comments were received regarding adoption of the new rule. The final document approved by the Board of Directors included updated performance numbers and other minor administrative corrections.

The new section is proposed pursuant to the authority of the Texas Government Code, §2306.0723, which requires the Department to follow rulemaking procedures in developing the report.

No other statutes, articles, or codes are affected by the proposed new section.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the Department) adopts by reference the 2008 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2008 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2008 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801472

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 6, 2008

Proposal publication date: January 4, 2008

For further information, please call: (512) 475-3916



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 122. TEMPORARY USE OF STATE BUILDINGS AND GROUNDS BY TELEVISION OR FILM PRODUCTION COMPANIES

13 TAC §§122.1 - 122.11

The Office of the Governor, Texas Film Commission (Commission) adopts new Chapter 122, §§122.1 - 122.11, concerning the temporary use of state buildings and grounds by television or film production companies, as well as their use for free for 7 days each fiscal year. These rules are adopted without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1212) and will not be republished.

These rules establish the requirements and procedures for the temporary use of any state buildings or grounds for production activity, as well as the requirements for receiving the use without charge. Legislation enacted in 2007 set forth these guidelines and established the oversight by the Texas Film Commission for the use of the state property.

The rules provide a clearer understanding of how state property may be used for production activity and how the use of state property will be administered by the Commission.

No comments were received regarding adoption of the new rules.

The new rules are adopted pursuant to the Texas Government Code §2165.008 which directs the Commission to develop procedures to allow production companies to use state property for production activity, and Government Code, Chapter 2001, Subchapter B which prescribes the standards for rulemaking by state agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801471

Michael Bryant

Assistant General Counsel

Texas Film Commission

Effective date: April 6, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 463-9200

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER A. STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §§45.8, 45.9, 45.11 - 45.16, relating to label information and requirements for distilled spirits, and §45.33, relating to certificate of label approval; and adopts new §45.33, relating to application, requirements and fees for certificate of registration for distilled spirits with changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8412). The repeal of §§45.8, 45.9, 45.11 - 45.16, and 45.33 are adopted without changes, and therefore, the sections will not be republished.

Senate Bill 904, §21, 80th Legislature, Regular Session, 2007, amended Chapter 101 of the Texas Alcoholic Beverage Code (Code) to add new §101.671 to the Code. This new section provides, in part, that an authorized permit holder may not ship distilled spirits into the state, or sell distilled spirits within the state without first registering and obtaining a certificate of registration from the commission. An applicant for a certificate of registration for distilled spirits must include a Certificate of Label Approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB). The commission must accept the COLA issued by the TTB as evidence that the distilled spirit meets the standards of quality, purity, and identity required by §5.38 of the Code. The effect of this section makes obtaining a COLA mandatory for all products shipped into or sold within the state. The commission will no longer issue a Certificate of Registration to any product without a COLA. The new section also provides that the distilled spirit may not be registered if the application is not submitted with a fee sufficient to cover the cost of administration of the section.

Sections 45.8, 45.9, 45.11 - 45.16, and 45.33, are repealed because they are no longer necessary after the adoption of new §45.33.

New §45.33 sets forth the requirements for application and approval of a Certificate of Registration (Certificate) by the commission. The section describes activities that are prohibited without first obtaining a certificate, who may submit an application for a Certificate, the form and required content of the application, the application fee of \$25.00 to be submitted with the application and a statement that the commission does not require additional product approval or testing to issue the Certificate.

The commission has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period. Some of the comments were accepted and changes made to the proposed rule as a result of the comments. Some comments were not accepted. The commenters were individuals and the Distilled Spirits Council of the United States. The commenters were generally in favor of the rule; however, they suggested changes as discussed in the summary of comments.

Comment: Concerning the rules generally, one commenter suggested that the heading of new §45.33 be changed to more accurately reflect that the application is for registration of the distilled spirit, not label approval, and that similar changes be reflected in the rule text.

Response: The commission agrees and has changed the section heading and rule text to reflect the comment.

Comment: Concerning §45.33(f), one commenter suggested that language be inserted requiring the commission to issue a certificate of registration if the requirements of the section were satisfied.

Response: The commission disagrees with this comment because it is unnecessary and is not required to implement the statute. No change was made as a result of the comment.

Comment: Concerning §45.33(a), one commenter suggested that upon submission of an application and payment of the required fee the applicant may ship and sell distilled spirits in the state and the commission shall issue a certificate of approval.

Response: The commission disagrees with this comment. Although not requiring further testing or approval of a product, Code §101.671, still requires that the commission act on the application and "issue a letter to that effect to the permittee". As indicated in the above comment, if all requirements of the section are met the commission will issue the certificate without compelling itself to do so by rule. No change was made as a result of the comment.

Comment: One commenter suggested that the commission restructure its brand registration scheme to a per brand basis, rather than a per brand/container size basis.

Response: The commission would like to clarify that this "restructuring brand registration" is a natural consequence of the acceptance of the federal COLA for registering a product with the commission. If the TTB requires only one COLA for the product, regardless of the container size, TABC will also only require the registration of that label for the product regardless of container size. Likewise, if the TTB requires separate COLA registrations for a range of container sizes, so will TABC. The intent was to bring TABC "in sync" with the federal label approval process. No change in the rule is required, as the rule already states "distilled spirit" or "product" rather than container. No changes were made as a result of the comment.

Comment: Concerning the amendment of other rules that are affected by the repeal and new section, one commenter suggested amendments to §§45.25, 45.28, 45.31, and 45.32.

Response: Although the commission agrees with the commenter, the changes are beyond the scope of the rule as proposed, and amendments will be submitted separately.

16 TAC §§45.8, 45.9, 45.11 - 45.16, 45.33

The repeal of the existing rules is adopted under the authority of §5.31 of the Alcoholic Beverage Code (Code), which authorizes the commission to adopt rules necessary to carry out provisions of the Code, §5.38 of the Code which provides specific authority to adopt rules governing the labeling and standards of quality, purity and identity of alcoholic beverages, and §101.671 of the Code which provides specific authority to register distilled spirits and accept the certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau as compliance with the requirements of §5.38 of the Code.

Cross Reference: Sections 5.31, 5.38, and 101.671 of the Alcoholic Beverage Code are affected by these repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2008.

TRD-200801379

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



16 TAC §45.33

The new rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code (Code), which authorizes the commission to adopt rules necessary to carry out provisions of the Code, §5.38 of the Code which provides specific authority to adopt rules governing the labeling and standards of quality, purity and identity of alcoholic beverages and §101.671 of the Code which provides specific authority to register distilled spirits and accept the certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau as compliance with the requirements of §5.38 of the Code.

Cross Reference: Sections 5.31, 5.38, and 101.671 of the Alcoholic Beverage Code are affected by the new rule.

§45.33. *Certificate of Registration.*

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Distiller's & Rectifier's Permit or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Distilled Spirit (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

(1) A certificate of label approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau;

(2) product brand name; and

(3) product class and type.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed

to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.

(e) The application fee for a Certificate is \$25.00.

(f) No additional approval or testing of the distilled spirit by the commission is required for issuance of a Certificate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. STANDARDS OF IDENTITY FOR WINE

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §45.50, relating to label application for wine and §45.51, relating to mandatory label information for wine, and adopts new §45.50, relating to requirements and fees for certificate of registration for wine with changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8413). Sections 45.50 and 45.51 are adopted without changes, therefore, the sections will not be republished.

Senate Bill 904, §21, 80th Legislature, Regular Session, 2007, amended Chapter 101 of the Texas Alcoholic Beverage Code (Code) to add new §101.671 to the Code. This new section provides, in part, that an authorized permit holder may not ship wine into the state, or sell wine within the state without first registering and obtaining a certificate of registration from the commission. An applicant for a certificate of registration must include a Certificate of Label Approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB). The commission must accept the COLA issued by the TTB as evidence that the wine meets the standards of quality, purity, and identity required by §5.38 of the Code. The effect of this section makes obtaining a COLA mandatory for all products shipped into or sold within the state. The commission will no longer issue a Certificate of Registration to any product without a COLA. The new section also provides that the wine may not be registered if the application is not submitted with a fee sufficient to cover the cost of administration of the section.

Sections 45.50 and 45.51 are repealed because they are no longer necessary after the adoption of new §45.50. The new section authorizes the acceptance of a TTB COLA as evidence that the product and label have satisfied each labeling standard contained in the repealed sections.

New §45.50 sets forth the requirements for application and approval of a Certificate of Registration (Certificate) by the commission. The section describes activities that are prohibited without first obtaining a certificate, who may submit an application for a Certificate, the form and required content of the application, the application fee of \$25.00 to be submitted with the application

and a statement that the commission does not require additional product approval or testing to issue the Certificate.

The commission has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. Some of the comments were accepted and changes made to the proposed rule as a result of the comments. Some comments were not accepted. The commenters were individuals and the Distilled Spirits Council of the United States. The commenters were generally in favor of the rules; however, they suggested changes as discussed in the summary of comments.

Comment: Concerning the rules generally, one commenter suggested that the heading of new §45.50 be changed to more accurately reflect that the application is for registration of the wine, not label approval, and that similar changes be reflected in the rule text.

Response: The commission agrees and has changed the section heading and rule text to reflect the comment.

Comment: Concerning §45.50(f) one commenter suggested that language be inserted requiring the commission to issue a certificate of registration if the requirements of the section were satisfied.

Response: The commission disagrees with this comment because it is not necessary; if all requirements of the section are met the commission will issue the certificate without compelling itself to do so by rule.

Comment: Concerning §45.50(a), one commenter suggested that upon submission of an application and payment of the required fee the applicant may ship and sell wine in the state and the commission shall issue a certificate of approval.

Response: The commission disagrees with this comment. Although not requiring further testing or approval of a product, Code §101.671, still requires that the commission act on the application and "issue a letter to that effect to the permittee". As indicated in the above comment if all requirements of the section are met the commission will issue the certificate without compelling itself to do so by rule.

Comment: One commenter suggested that the commission restructure its brand registration scheme to a per brand basis, rather than a per brand/container size basis.

Response: The commission would like to clarify that this "restructuring brand registration" is a natural consequence of the acceptance of the federal COLA for registering a product with the commission. If the TTB requires only one COLA for the product, regardless of the container size, TABC will also only require the registration of that label for the product regardless of container size. Likewise, if the TTB requires separate COLA registrations for a range of container sizes, so will TABC. The intent was to bring TABC "in sync" with the federal label approval process. No change in the rule is required, as the rule already states "wine" or "product" rather than container.

Comment: Concerning the amendment of other rules that are affected by the repeal and new section, one commenter suggested the repeal of §45.52.

Response: Although the commission agrees with the commenter, the changes are beyond the scope of the rule as proposed, and a repeal of the section will be submitted separately.

16 TAC §45.50, §45.51

The repeals are adopted under the authority of §5.31 of the Alcoholic Beverage Code (Code), which authorizes the commission to adopt rules necessary to carry out provisions of the Code, §5.38 of the Code which provides specific authority to adopt rules governing the labeling and standards of quality, purity and identity of alcoholic beverages and §101.671 of the Code which provides specific authority to register wine and accept the certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau as compliance with the requirements of §5.38 of the Code.

Cross Reference: Sections 5.31, 5.38, and 101.671 of the Alcoholic Beverage Code are affected by these repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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16 TAC §45.50

The new rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code (Code), which authorizes the commission to adopt rules necessary to carry out provisions of the Code, §5.38 of the Code which provides specific authority to adopt rules governing the labeling and standards of quality, purity and identity of alcoholic beverages and §101.671 of the Code which provides specific authority to register wine and accept the certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau as compliance with the requirements of §5.38 of the Code.

Cross Reference: Sections 5.31, 5.38, and 101.671 of the Alcoholic Beverage Code are affected by the new rule.

§45.50. Certificate of Registration.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Wine (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

- (1) A certificate of label approval (COLA) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB);
- (2) product brand name; and
- (3) product class and type;
- (4) fanciful name;
- (5) appellation and vintage;

- (6) alcohol content;
- (7) size of container.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the wine as shipped, sold, or marketed, or an exact color copy of a label must be included with the application.

(e) The application fee for a Certificate of Registration is \$25.00.

(f) No additional approval or testing of the wine by the commission is required for issuance of a Certificate of Registration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

The Texas Board of Architectural Examiners adopts an amendment to §1.5, pertaining to terms defined within the rules. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9206). The amendment is being adopted with a change. The amendment defines the terms "energy efficient design" and "sustainable design" to implement legislation which will require registrants to annually obtain continuing education in energy efficient and sustainable design effective September 1, 2008. The amendment provides registrants guidance in the nature of the educational programs they must complete to fulfill the new requirement. The change corrects a sentence in the definition of energy-efficient design by completing the phrase "as well as."

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.356, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to enforce laws within the agency's jurisdiction and which require the Board to recognize continuing education programs for its certificate holders, including programs related to sustainable or energy efficient design standards. The amendment is also adopted pursuant to SB 541 from the 80th Legislature which requires the Board

to adopt rules to implement required continuing education in sustainability and energy efficient design standards.

§1.5. Terms Defined Herein.

The following words, terms, and acronyms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) The Act--The Architects' Registration Law.
- (2) Actual Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.
- (3) Administrative Procedure Act (APA)--Texas Government Code §§2001.001 et seq.
- (4) APA--Administrative Procedure Act.
- (5) Applicant--An individual who has submitted an application for registration or reinstatement but has not yet completed the registration or reinstatement process.
- (6) Architect--An individual who holds a valid Texas architectural registration certificate granted by the Board.
- (7) Architect Registration Examination (ARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas architectural registration certificate.
- (8) Architect Registration Examination Financial Assistance Fund (AREFAF)--A program administered by the Board which provides monetary awards to Candidates and newly registered Architects who meet the program's criteria.
- (9) Architects' Registration Law--Article 249a, Vernon's Texas Civil Statutes, and Chapter 1051, Texas Occupations Code.
- (10) Architectural Barriers Act--Article 9102, Vernon's Texas Civil Statutes and Texas Government Code, Chapter 469.
- (11) Architectural Intern--An individual enrolled in the Intern Development Program (IDP).
- (12) ARE--Architect Registration Examination.
- (13) AREFAF--Architect Registration Examination Financial Assistance Fund.
- (14) Authorship--The state of having personally created something.
- (15) Barrier-Free Design--The design of a building or a facility or the design of an alteration of a building or a facility which complies with the Texas Accessibility Standards, the Americans with Disabilities Act, the Fair Housing Accessibility Guidelines, or similarly accepted standards for accessible design.
- (16) Board--Texas Board of Architectural Examiners.
- (17) Candidate--An Applicant approved by the Board to take the ARE.
- (18) CEPH--Continuing Education Program Hour(s).
- (19) Chair--The member of the Board who serves as the Board's presiding officer.
- (20) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents issued by an Architect for the purpose(s) of Regulatory Approval, permitting, or construction.
- (21) Consultant--An individual retained by an Architect who prepares or assists in the preparation of technical design docu-

ments issued by the Architect for use in connection with the Architect's Construction Documents.

(22) Contested Case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(23) Continuing Education Program Hour (CEPH)--At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(24) Council Certification--Certification granted by NCARB to architects who have satisfied certain standards related to architectural education, training, and examination.

(25) Delinquent--A registration status signifying that an Architect

(A) has failed to remit the applicable renewal fee to the Board and

(B) is no longer authorized to Practice Architecture in Texas or use any of the terms restricted by the Architects' Registration Law.

(26) Direct Supervision--The amount of oversight by an individual overseeing the work of another whereby the supervisor and the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

(27) E-mail Directory--A listing of e-mail addresses

(A) used to advertise architectural services and

(B) posted on the Internet under circumstances where the Architects included in the list have control over the information included in the list.

(28) Emeritus Architect (or Architect Emeritus)--An honorary title that may be used by an Architect who has retired from the Practice of Architecture in Texas pursuant to Texas Occupations Code, §1051.357.

(29) Energy-Efficient Design--The design of a project and the specification of materials to minimize the consumption of energy in the use of the project. The term includes energy efficiency strategies by design as well as the incorporation of alternative energy systems.

(30) Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed architectural project from a technical architectural standpoint.

(31) Good Standing--

(A) a registration status signifying that an Architect is not delinquent in the payment of any fees owed to the Board or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by an architectural registration board that would provide a ground for the denial of the application for architectural registration in Texas.

(32) Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(33) Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(34) IDP--The Intern Development Program as administered by NCARB.

(35) Inactive--A registration status signifying that an Architect may not Practice Architecture in the State of Texas.

(36) Intern Development Program (IDP)--A comprehensive internship program established, interpreted, and enforced by NCARB.

(37) Intern Development Training Requirement--Architectural experience necessary for an Applicant to obtain architectural registration by examination in Texas.

(38) Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facilities, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(39) Licensed--Registered.

(40) Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(41) NAAB--National Architectural Accrediting Board.

(42) National Architectural Accrediting Board (NAAB)--An agency that accredits architectural degree programs in the United States.

(43) National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from fifty-five (55) states and territories of the United States.

(44) NCARB--National Council of Architectural Registration Boards.

(45) Nonregistrant--An individual who is not an Architect.

(46) Practice Architecture--Perform or do or offer or attempt to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(47) Practicing Architecture--Performing or doing or offering or attempting to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(48) Practice of Architecture--A service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters.

(A) The term includes:

(i) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(ii) preparing or supervising and controlling the preparation of the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Texas Occupations Code, §1051.606(a)(4); and

(iii) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in clause (ii) of this subparagraph for any building, group of buildings, or environs requiring an architect.

(B) The term "practice of architecture" also includes the following activities which, pursuant to Texas Occupations Code §1051.701(a), may be performed by a person who is not registered as an Architect:

(i) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(ii) recommending and overseeing appropriate construction project delivery systems;

(iii) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(iv) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(v) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

(49) Principal--An architect who is responsible, either alone or with other architects, for an organization's Practice of Architecture.

(50) Prototypical--From or of an architectural design intentionally created not only to establish the architectural parameters of a building or facility to be constructed but also to serve as a functional model on which future variations of the basic architectural design would be based for use in additional locations.

(51) Public Entity--A state, a city, a county, a city and county, a district, a department or agency of state or local government which has official or quasi-official status, an agency established by state or local government though not a department thereof but subject to some governmental control, or any other political subdivision or public corporation.

(52) Registered--Licensed.

(53) Registrant--Architect.

(54) Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the architectural content of the Construction Documents as a prerequisite to construction or occupation of a building or a facility.

(55) Reinstatement--The procedure through which a cancelled, Surrendered, or revoked Texas architectural registration certificate is restored.

(56) Renewal--The procedure through which an Architect pays a periodic fee so that the Architect's registration certificate will continue to be effective.

(57) Responsible Charge--That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the applicable architectural standard of care.

(58) Rules and Regulations of the Board--22 Texas Administrative Code §§1.1 et seq.

(59) Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(60) Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes of each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(61) SOAH--State Office of Administrative Hearings.

(62) State Office of Administrative Hearings (SOAH)--A Governmental Entity created to serve as an independent forum for the conduct of adjudicative hearings involving the executive branch of Texas government.

(63) Supervision and Control--The amount of oversight by an architect overseeing the work of another whereby

(A) the architect and the individual performing the work can document frequent and detailed communication with one another and the architect has both control over and detailed professional knowledge of the work; or

(B) the architect is in Responsible Charge of the work and the individual performing the work is employed by the architect or by the architect's employer.

(64) Supplemental Document--A document that modifies or adds to the technical architectural content of an existing Construction Document.

(65) Surrender--The act of relinquishing a Texas architectural registration certificate along with all privileges associated with the certificate.

(66) Sustainable Design--An integrative approach to the process of design which seeks to avoid depletion of energy, water, and raw material resources; prevent environmental degradation caused by facility and infrastructure developments during their implementation and over their life cycle; and create environments that are livable and promote health, safety and well-being. Sustainability is the concept of meeting present needs without compromising the ability of future generations to meet their own needs.

(67) TBAE--Texas Board of Architectural Examiners.

(68) TDLR--Texas Department of Licensing and Regulation.

(69) Texas Department of Licensing and Regulation (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(70) Texas Guaranteed Student Loan Corporation (TGSLOC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(71) TGSLOC--Texas Guaranteed Student Loan Corporation.

(72) Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8544

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SUBCHAPTER C. EXAMINATION

22 TAC §1.41

The Texas Board of Architectural Examiners adopts an amendment to §1.41, pertaining to requirements for taking the Architectural Registration Examination. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9208). The amendment is being adopted without changes and the text will not be republished. The amendment requires applicants to enroll in the intern development program by establishing a council record at the National Council of Architectural Registration Boards (NCARB) as a prerequisite for taking the Architectural Registration Examination. The amendment makes the rule conform to a national standard to eliminate potential obstacles to reciprocal registration of Texas architects in other jurisdictions.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.705(a)(2) of the Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and authority to prescribe by rule satisfactory architectural experience to apply to take the architectural registration examination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §1.44

The Texas Board of Architectural Examiners adopts an amendment to §1.44, pertaining to the transfer of passing scores. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9209). The amendment is being adopted without changes and the text will not be republished.

The rule allows candidates for licensure in another jurisdiction to transfer passing scores on sections of the registration examination to Texas in order to seek registration in Texas instead of the other jurisdiction. The amendment imposes upon candidates who transfer scores to Texas the same five-year deadline for successful completion of the examination which applies to candidates who originally seek registration in Texas. The amendment applies the same deadline to all candidates to ensure equitable treatment.

The agency received no comments concerning the proposal to amend this rule.

The amendment to the rule is adopted pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the

Texas Board of Architectural Examiners with authority to promulgate rules to administer or enforce its enabling legislation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§1.65 - 1.69

The Texas Board of Architectural Examiners adopts amendments to §§1.65 - 1.69, pertaining to certification and annual registration. The proposal to amend these rules were published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9210). The amendments are being adopted without changes and the text will not be republished.

The amendments implement recently enacted legislative changes. The amendments to §1.65 and §1.66 implement a change in the statutes which specifies that a certificate of registration issued by the Board is canceled two years after it expires unless renewed. Previously, a certificate of registration was canceled one year after expiration. The amendment to §1.67 implements technical, non-substantive changes to §1051.357, Texas Occupations Code, and corrects an incorrect cross-reference to a statute. The amendment to §1.68 eliminates an obsolete provision which allowed architects on inactive status to use the titles "emeritus architect" and "architect emeritus" under certain circumstances. The provision predates the statute relating to emeritus status. Under the amended Section inactive architects who held an emeritus architectural registration on or before January 1, 2002, may continue to use the emeritus title. The amendment to §1.69 implements recently enacted legislation that requires each registrant to annually earn one continuing education program hour in the study of sustainable or energy-efficient design. The required hour of education is not in addition to the eight hours of continuing education each registrant must earn under the current rule. Thus, one of the required eight hours of continuing education must cover topics relating to sustainable or energy-efficient design.

The agency received comments concerning the proposal to amend §1.69: The commentators opposed the rule because they did not favor specifying sustainable design as a required topic for continuing education. One commentator argued that life safety issues ought to have a higher priority than sustainability in continuing education. Another commentator noted that some architects specialize in designs for which sustainability and energy efficiency are secondary consideration. Another commentator opined that sustainable design is a trend that does not involve a discrete aspect of architecture beyond or different from the current practices of architects. The commentator seemed to speak in opposition to mandating certification or

meeting a standard on sustainability in the design of projects. The Board notes that the rule implements legislation passed by the 80th Legislature. The requirement that each architect complete one hour of continuing education in sustainability or energy efficiency was created by Senate Bill (SB) 541 which also requires the Board to adopt rules to implement the requirement. The rule requires continuing education on sustainable and energy efficient design and does not mandate the incorporation of sustainable design principles. For these reasons, the Board did not refrain from adopting the rule as urged by the commentators.

The amendments to these rules are adopted pursuant to §1051.202 of Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The amendments are also adopted pursuant to §§1051.357, 1051.353, and 1051.355, Texas Occupations Code, which require the Board to adopt rules to establish procedures relating to registration and renewal as an emeritus architect, registration renewal, and inactive registration, respectively. The amendment to §1.69 was adopted pursuant to §1051.356 as amended by SB 541 which requires architects to annually complete continuing education requirements including at least one hour of education in sustainable or energy efficient design standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

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SUBCHAPTER E. FEES

22 TAC §1.82

The Texas Board of Architectural Examiners adopts an amendment to §1.82, pertaining to Fees. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9211). The amendment is being adopted without changes and the text will not be republished.

The amendment implements recently enacted legislation which requires cancellation of a registrant's certificate of registration two years after it expires. Previous law required cancellation of a certificate one year after it expired. The effect of the amendment will be to bring the rule into compliance with the law and require the board to send notice of a pending cancellation within that two-year period instead of during a one-year period required in the previous law.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.353, Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with general authority to promulgate rules, including rules related to the ex-

piration of registration and which specify the cancellation of a certification of registration two years after it expires.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2008.

TRD-200801443

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: April 3, 2008

Proposal publication date: December 14, 2007

For further information, please call: (512) 305-8544



CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners adopts an amendment to §3.5, pertaining to terms defined within the rules. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9212). The amendment is being adopted without changes and the text will not be republished. The amendment defines the terms "energy-efficient design" and "sustainable design" for purposes of another simultaneously adopted rule which implements new law that requires registrants to complete continuing education on energy efficiency or sustainable design standards. The amendment also makes technical changes to the definition of the term "emeritus landscape architect" to include a cross-reference to a new statute creating explicit statutory emeritus registration status for landscape architects. The amendments will give guidance to registrants in fulfilling continuing education requirements and obtaining emeritus status.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules and §1051.356, Texas Occupations Code, which requires the Board to adopt rules requiring registrants to obtain annual education on sustainable or energy-efficient design standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EXAMINATION

22 TAC §3.44

The Texas Board of Architectural Examiners adopts an amendment to §3.44, pertaining to transfer of passing scores. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9214). The amendment is being adopted without changes and the text will not be republished. The rule allows candidates for licensure in another jurisdiction to transfer passing scores on sections of the registration examination to Texas in order to seek registration in Texas instead of the other jurisdiction. The amendment imposes upon candidates who transfer scores to Texas the same five-year deadline for successful completion of the examination which applies to candidates who originally seek registration in Texas. The amendment applies the same deadline to all candidates to ensure equitable treatment.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules to administer or enforce its enabling legislation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA

Executive Director

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For further information, please call: (512) 305-8544



SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§3.65 - 3.69

The Texas Board of Architectural Examiners adopts amendments to §§3.65 - 3.69, pertaining to certification and annual registration. The proposal to amend these rules was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9215). The amendments are being adopted without changes and the text will not be republished. The amendments implement recently enacted legislative changes. The amendments to §3.65 and §3.66 implement a change in the statutes which specifies that a certificate of registration issued by the Board is canceled two years after it expires unless renewed. Previously, a certificate of registration was canceled one year after expiration. The new version of §3.67 implements §1052.155, Texas Occupations Code, which requires the Board to adopt by rule a procedure for qualified landscape architects to register as emeritus landscape architects. The amendment to §3.68 eliminates an obsolete provision which allowed landscape architects on inactive status to use the titles "emeritus landscape architect" and "landscape architect emeritus" under certain circumstances. The provision predates the statute which creates the emeritus status and specifies the process for obtaining emeritus status. Under the amended section,

inactive landscape architects who held an emeritus registration on or before January 1, 2002, may continue to use the emeritus title. The amendment to §3.69 implements recently enacted legislation which requires each registrant to annually earn one continuing education program hour in the study of sustainable or energy-efficient design. The required hour of education is not in addition to the eight hours of continuing education each registrant must earn. Thus, one of the required eight hours of continuing education must cover topics relating to sustainable or energy-efficient design.

The agency received no comments concerning the proposal to amend this rule.

The amendments to these rules is adopted pursuant to §1051.202 of Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The amendments are also adopted pursuant to §§1052.155, 1051.353, and 1051.355, Texas Occupations Code, which require the Board to adopt rules to establish procedures relating to registration and renewal as an emeritus landscape architect, registration renewal, and inactive registration, respectively.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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SUBCHAPTER E. FEES

22 TAC §3.82

The Texas Board of Architectural Examiners adopts an amendment to §3.82, pertaining to Fees. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9216). The amendment is being adopted without changes and the text will not be republished. The amendment implements recently enacted legislation which requires cancellation of a registrant's certificate of registration two years after it expires. Previous law required cancellation of a certificate one year after it expired. The amendment will bring the rule into compliance with the law and require the board to send notice of a pending cancellation within that two-year period instead of during a one-year period required in the previous law.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.353, Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with general authority to promulgate rules, including rules related to the expiration of registration and which specify the cancellation of a certification of registration two years after it expires.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA

Executive Director

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For further information, please call: (512) 305-8544



CHAPTER 5. INTERIOR DESIGNERS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners adopts an amendment to §5.5, pertaining to terms defined within the rules. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9217). The amendment is being adopted without changes and the text will not be republished. The amendment defines the terms "energy-efficient design" and "sustainable design" for purposes of another simultaneously adopted rule which implements new law that will require registrants to complete continuing education on energy efficiency and sustainable design. The amendment also makes technical changes to the definition of the term "emeritus interior designer" to include a cross-reference to a new statute creating explicit statutory emeritus registration status for interior designers. The amendment gives guidance to registrants in fulfilling continuing education requirements and obtaining emeritus status.

The agency received comments concerning the proposal to amend this rule: The Texas Association for Interior Design submitted a position statement from the American Society of Interior Designers favoring sustainability and energy efficiency as an essential part of the professional responsibility of an interior designer.

The amendment to this rule is adopted pursuant to §1051.202, Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules and §1051.356, Texas Occupations Code, as amended by SB 541 by the 80th Legislature, which requires the Board to adopt rules requiring registrants to obtain annual education on sustainable or energy-efficient design standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2008.

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Cathy L. Hendricks, ASID/IIDA

Executive Director

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SUBCHAPTER C. EXAMINATION

22 TAC §5.54

The Texas Board of Architectural Examiners adopts an amendment to §5.54, pertaining to the transfer of passing scores. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9219). The amendment is being adopted without changes and the text will not be republished. The rule allows candidates for licensure in another jurisdiction to transfer passing scores on sections of the registration examination to Texas in order to seek registration in Texas instead of the other jurisdiction. The amendment imposes upon candidates who transfer scores to Texas the same five-year deadline for successful completion of the examination which applies to candidates who originally seek registration in Texas. The amendment applies the same deadline to all candidates to ensure equitable treatment.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 of the Texas Occupations Code Annotated which provides the Texas Board of Architectural Examiners with authority to promulgate rules to administer or enforce its enabling legislation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200801450

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §§5.75 - 5.79

The Texas Board of Architectural Examiners adopts amendments to §§5.75 - 5.79, pertaining to certification and annual registration. The proposal to amend these rules were published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9219). The amendments are being adopted without changes and the text will not be republished.

The amendments implement recently enacted legislative changes. The amendments to §5.75 and §5.76 implement a change in the statutes which specifies that a certificate of registration issued by the Board is canceled two years after it expires unless renewed. Previously, a certificate of registration was canceled one year after expiration. Amended §5.77 implements §1053.156, Texas Occupations Code, which requires the Board to adopt by rule a procedure for qualified interior designers to register as emeritus interior designers. Amended §5.78 eliminates an obsolete provision which allowed interior designers on inactive status to use the titles "emeritus interior designer"

and "interior designer emeritus" under certain circumstances. The provision predates the statute which creates the emeritus status and specifies the process for obtaining emeritus status. Under the Section as amended inactive interior designers who held an emeritus registration on or before January 1, 2002, may continue to use the emeritus title. The amendment to §5.79 implements recently enacted legislation that requires each registrant of the agency to annually earn one continuing education program hour in the study of sustainable or energy-efficient design. The required hour of education is not in addition to the eight hours of continuing education each registrant must earn. Thus, one of the required eight hours of continuing education must cover topics relating to sustainable or energy-efficient design.

The agency received comments concerning the proposal to amend §5.79: The Texas Association for Interior Design submitted a position statement from the American Society of Interior Designers favoring sustainability and energy efficiency as an essential part of the professional responsibility of an interior designer.

The amendment to these rules are adopted pursuant to §1051.202 of Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The amendments are also adopted pursuant to §§1053.156, 1051.353, and 1051.355, Texas Occupations Code, which require the Board to adopt rules to establish procedures relating to registration and renewal as an emeritus interior designer, registration renewal, and inactive registration, respectively. The amendment to §5.79 is adopted pursuant to §1051.356, Texas Occupations Code, as amended by Senate Bill 541, 80th Legislature, which requires the Board to adopt rules to implement the requirement that the Board's registrants annually obtain continuing education in sustainable or energy efficient design standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2008.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8544



SUBCHAPTER E. FEES

22 TAC §5.92

The Texas Board of Architectural Examiners adopts an amendment to §5.92, pertaining to Fees. The proposal to amend this rule was published in the December 14, 2007, edition of the *Texas Register* (32 TexReg 9221). The amendment is being adopted without changes and the text will not be republished. The amendment implements recently enacted legislation which requires cancellation of a registrant's certificate of registration two years after it expires. Previous law required cancellation of a certificate one year after it expired. The amendment will bring the rule into compliance with the law and require the board to

send notice of a pending cancellation within that two-year period instead of during a one-year period required in the previous law.

The agency received no comments concerning the proposal to amend this rule.

The amendment to this rule is adopted pursuant to §1051.202 and §1051.353, Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with general authority to promulgate rules, including rules related to the expiration of registration and which specify the cancellation of a certification of registration two years after it expires.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8544



PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER E. EXPERIENCE

22 TAC §133.43

The Texas Board of Professional Engineers (Board) adopts an amendment to §133.43, relating to Experience Evaluation, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9005) and will not be republished.

The adopted amendment would clarify the requirements for counting experience credit gained prior to receiving a qualifying degree and would limit the claimed experience gained in this manner to a total of two years.

Four public comments were received in opposition of the Board's adoption of the amended section. All four were from individuals employed by the Texas Department of Transportation. Each commenter was concerned that the amendment would restrict the amount of experience that they could count toward their application. In addition, they expressed concern that individuals that began work prior to completing their degree would be at a disadvantage. In response, the Board noted that the standard licensure process is for all experience to be gained after graduation from a qualifying degree program, and emphasized that the limitation of two years of experience prior to licensure is a reasonable accommodation.

The amendment is adopted pursuant to the Texas Engineering Practice Act (Act), Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and

Occupations Code §1001.302, which requires that an applicant meet educational and experience requirements as determined by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801453

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 6, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers (Board) adopts an amendment to §133.69, relating to Waivers of Examinations, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9006) and will not be republished.

The adopted rule change would permit a former Texas license holder who was previously licensed without one or more examinations to re-apply via the waiver process.

Two public comments were received regarding the Board's adoption of the amended section. The first was in favor of the amendment. The second was in favor of the amendment and recommended an additional change to subsection (e). The Board decided not to make the proposed change at this time and directed agency staff to review the change for a possible future rulemaking.

The amendment is adopted pursuant to the Texas Engineering Practice Act (Act), Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.305, which permits the Board to waive the examination requirements for licensure; and Occupations Code §1001.353, which requires a person whose Texas license has expired for two years or more to re-apply under the current law and rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801454

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 6, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATION

22 TAC §571.3

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.3, regarding the ability to sit for the national veterinary examination by foreign graduates from non-accredited colleges of veterinary medicine, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8262) and will not be republished.

The amendment to §571.3 requires that the foreign graduate of a non-accredited college of veterinary medicine complete the requirements set out by the Board-recognized foreign graduate programs to be eligible to apply for the national veterinary examination. The Board is seeking to ensure compliance with the Board-recognized foreign graduate programs with this amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that authorizes the Board to adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801456

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: April 6, 2008

Proposal publication date: November 16, 2007

For further information, please call: (512) 305-7563



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.50

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.50, regarding the records keeping for controlled substances kept on hand by licensed veterinarians, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8264) and will not be republished.

The amendment to §573.50 deletes the requirement to record the diagnosis on the patient receiving the controlled drug recorded. The requirement for diagnosis is not necessary to accurately reflect the controlled substances used by the veterinarian in the course of his or her practice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801457

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: April 6, 2008

Proposal publication date: November 16, 2007

For further information, please call: (512) 305-7563



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Commissioner of Insurance adopts amendments to §9.1 and §9.401, concerning the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The amended sections are adopted with changes to the proposed text published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9526). The items adopted by reference include typographical corrections and other non-substantive changes based on public comments.

REASONED JUSTIFICATION. The amendments to the Basic Manual and Statistical Plan, which the amended sections adopt by reference, were considered at the rulemaking phase of the 2006 Texas Title Insurance Biennial Hearing (Biennial Hearing) held on September 5, 2007, Docket Number 2668. The rulemaking phase of the hearing was conducted pursuant to Insurance Code §2703.205. The adoption by reference of new rules and forms and the modification or replacement of currently existing rules and forms in the Basic Manual and Statistical Plan facilitate the administration and regulation of title insurance in this state. These amendments clarify and standardize the rules and forms regulating the writing and the business of title insurance in the State of Texas. The amendments to the Basic Manual and Statistical Plan are identified by the item number used in the September 5 hearing. Pursuant to Commissioner's Order No. 08-0186, March 05, 2008, Items 2006-11, 2006-13, 2006-23, 2006-25, 2006-28, 2006-37, and 2006-64 were disapproved. The section of Item 2006-44 regarding the Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for the Audit of Trust Funds of the Basic Manual was also disapproved. Items 2006-18, 2006-20, 2006-21, 2006-41, and 2006-67 were approved for withdrawal from consideration during the rulemaking phase of the hearing at the request of each entity that originally filed the items for consideration.

The effective date of the adopted amendments to §9.1 and §9.401 is May 1, 2008. In accordance with Insurance Code §2703.205(d), the ratemaking phase of the Biennial Hearing was referred to the State Office of Administrative Hearings (SOAH), SOAH Docket No. 454-07-3748.G. The ratemaking phase of the hearing was concluded on February 25, 2008, by settlement of the parties. Pursuant to Commissioner's Order No. 08-0160, dated February 25, 2008, the effective date of the amendments adopted pursuant to the ratemaking phase of the hearing will be May 1, 2008. The rate rules were adopted as part of the Basic Manual, and the Department has changed the text of the amendments to §9.1 in order to conform the effective date of the items adopted by reference in the rulemaking phase of the Biennial Hearing with the effective date of the items adopted in the ratemaking phase of the hearing. In addition, amendments to the Statistical Plan were adopted, and the Department has changed the text of the amendments to §9.401 in order to conform the effective date of the amendments to the Statistical Plan adopted in the rulemaking phase of the Biennial hearing with the amendments to the Statistical Plan adopted in the ratemaking phase of the hearing. The Department also has made several non-substantive changes to the items adopted by reference. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The Department has made typographical corrections to items adopted by reference, including correcting a duplicate code reference for Rate Rule Reference R-29C on Table 4 of the Statistical Plan. The code for Rate Rule Reference R-29C on Table 4 of the Plan has been corrected to 0895. Additionally, in response to comments, the Department has made the following non-substantive changes to the items adopted by reference:

Item 2006-4 - The Department has capitalized the term "Land" in paragraph 1 of the amended Supplemental Coverage Manufactured Housing Unit Endorsement (T-31.1) in order to conform to the capitalization conventions adopted by Items 2006-24 and 2006-26.

Item 2006-5 - The Department has changed several references to "Conditions and Stipulations" to "Conditions" in order to conform to the language of the Loan Policy as amended by Item 2006-26. The Department has also changed a reference to the Amount of Insurance definition in paragraph 4 from Section 2(c)(ii) to Section 1(a) in order to reflect the correct paragraph number of the amended Loan Policy.

Items 2006-10 and 2006-16 - The Department has changed the references to "Mortgagee Policy" and "Owner Policy" found in Items 2006-10 and 2006-16 to "Loan Policy" and "Owner's Policy", respectively, in order to conform to the new naming conventions adopted by Items 2006-24 and 2006-26 and to be consistent with Item 2006-27. The Department has also updated the language of paragraph B(6) of Item 2006-10 to correspond with the new requirements of Procedural Rule 45, as amended by Item 2006-16.

Item 2006-26 - The Department has reformatted the Loan Policy of Title Insurance (T-2) form to include check boxes in front of option items within the form. The revised format is consistent with the format contained in Item 2006-26 as originally filed and considered at the September 5 hearing.

Item 2006-27 - The Department has revised paragraph bb to correct a software conversion problem that caused the language to be scrambled in the proposal. The revised language of para-

graph bb is consistent with the language contained in Item 2006-27 as originally filed and considered at the September 5 hearing. The Department has also changed the form number of the Conditions of the Loan Policy in paragraph ee from "T-1" to "T-2" in order to reflect the correct form number of the policy.

Item 2006-38 - The Department has added the language "Procedural Rule 67, adopted on May 1, 2008, is effective October 1, 2008." The Department believes that additional notice is warranted in order to provide a sufficient transition time for all underwriters affected by the rule, including additional time for the retooling of their databases and the upgrading of their data gathering capabilities, in order to meet the requirements of the rule.

Item 2006-65 - The Department has added the language "The amendments to P-24 adopted on May 1, 2008, are effective July 1, 2008." The Department believes that additional notice is warranted in order to provide a sufficient transition time for all parties to negotiate prior written agreements under the new restrictions provided in the amended Procedural Rule 24 of the Basic Manual. The Department has also added the '%' sign for the 90/10 category of premium splits.

HOW THE SECTIONS WILL FUNCTION. The amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and Statistical Plan. The amendments to §9.1 also correct a typographical error by updating the zip code referenced in the rule. The items which are the subject of this adoption are as follows:

Item 2006-1 - Adoption of a new Co-Insurance Endorsement Form T-48 to accommodate commercial lenders and owners who often request this endorsement in multi-state, multi-site, and other large transactions.

Item 2006-2 - Adoption of an amendment to Procedural Rule P-6 to authorize a Co-insurer to issue a Co-insurance Endorsement to another Title Insurer's Owner or Mortgagee Policy when the co-insurance transaction exceeds fifteen million dollars.

Item 2006-3 - A repeal of the current Verification of Services Rendered Form T-00 and adoption of a new Form T-00 to organize the information each entity participating in the transaction must provide and to assist underwriters in reporting that information to the Department.

Item 2006-4 - Adoption of an amendment to the Supplemental Coverage Manufactured Housing Unit Endorsement Form T-31.1 to conform to the new American Land Title Association form by clarifying the insurance against personal property liens and by ensuring that a foreclosure of an insured mortgage may be conducted by one procedure.

Item 2006-5 - Adoption of an amendment to the Revolving Credit Endorsement Form T-35 to change the name to the Revolving Credit/Future Advance Endorsement Form T-35 and to conform to the American Land Title Association form by expanding coverage to the lender.

Item 2006-6 - Adoption of an amendment to the Residential Real Property Affidavit T-47 by removing specific language in the affidavit that requires the name of the title company to be identified and to insert generic language to allow the affidavit to be prepared and executed early in the transaction process.

Item 2006-7 - Adoption of a new Procedural Rule (P-63) that incorporates the procedural portion of Rate Rule R-2.(d) concerning a policy issued to a qualified intermediary under IRS Code 1031 and also contains deletions and improved formatting.

Item 2006-8 - Adoption of a new Procedural Rule (P-64) regarding the treatment of subordinate liens and leases in order to better alert title companies to comply with the instruction in Procedural Rule P-11.b.(8).

Item 2006-9 - Adoption of a new Procedural Rule (P-65) in conformity with Insurance Code §2704.051 and §2704.052 to require an Owner's Policy be issued in connection with a Mortgagee Policy unless the person acquiring title rejects it.

Item 2006-10 - Adoption of a new Procedural Rule (P-66) to include procedures currently in other rate and procedural rules into one rule relating to determining the correct amount of insurance in owner and mortgagee policies.

Item 2006-12 - Adoption of an amendment to Procedural Rule P-7 to incorporate the language from Bulletin 157 into the procedural rules and to resolve the question as to whether it is permissible to include the "successor in ownership" language as part of the Proposed Insured in a Commitment.

Item 2006-14 - Adoption of an amendment to Procedural Rule P-21 to make the terms used in the rule consistent with Insurance Code §2651.203 and to update references to the Commissioner of Insurance.

Item 2006-15 - Adoption of an amendment to Procedural Rule P-28 to eliminate the need for a company owning multiple title insurance companies to make multiple course submissions and/or assignments between the related title insurance company providers.

Item 2006-16 - Adoption of an amendment to Procedural Rule P-45 to make the rule consistent with the federal requirements regarding the Maximum Claim Amount for FHA-insured loans and to allow the insured amount to be determined by lenders through a lender estimation of the maximum amount that may be secured by lien.

Item 2006-17 and Item 2006-42 (combined) - Adoption of an amendment to Procedural Rule P-53 to remove the sunset provision contained within the rule.

Item 2006-19 - Adoption of an amendment to Administrative Rule L-1 to provide that the Department send notice of renewal to each agent at least 45 days prior to the expiration of the agent's license and, if not renewed, within 45 days after the license expires. The notice provision applies only to active licenses, is administrative in nature, does not undermine the responsibility of the licensed agent to maintain a current license, and does not prejudice any enforcement action brought by the Department.

Item 2006-22 - Adoption of an amendment to the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys, and Attorney's Licensed as Escrow Officers pertaining to the Policy Guaranty Fee and Guaranty Assessment Recoupment Charge to provide that maintaining a policy guaranty fee escrow account and a guaranty assessment recoupment charge escrow account separate from the agent's standard audited escrow account is optional.

Item 2006-24 - Adoption of an amendment to the Owner Policy of Title Insurance Form T-1 based on the new 2006 American Land Title Association Owner's Policy.

Item 2006-26 - Adoption of an amendment to the Mortgagee Policy of Title Insurance Form T-2 based on the new 2006 American Land Title Association Loan Policy.

Item 2006-27 - Adoption of an amendment to Procedural Rule P-1 to rename the "Owner Policy" and the "Mortgagee Policy" to coincide with the terminology utilized in the corresponding American Land Title Association policies and to provide that the new terminology be incorporated into newly printed or electronically generated forms.

Item 2006-29 - Adoption of an amendment to Procedural Rule P-32 to clarify time periods for retention of documents and to conform this procedural rule to the provisions of UETA and E-SIGN.

Item 2006-30 - Adoption of an amendment to Procedural Rule P-36 to conform with the proposed amendments to the Owner Policy and Mortgagee Policy and to increase the threshold for arbitral matters to two million dollars and delete the choice of law provision.

Item 2006-31 - Adoption of an amendment to Procedural Rule P-37 to conform to the proposed amendments to the Owner Policy and Mortgagee Policy.

Item 2006-32 - Adoption of an amendment to the Facultative Reinsurance Agreement Form T-18.1 based on changes contained in the new American Land Title Association's Reinsurance Agreement and to clarify a reinsurer's payment obligations.

Item 2006-33 - Adoption of an amendment to the Restrictions, Encroachments, Minerals Endorsement T-19 to conform to the new American Land Title Association Endorsement 9.3-06, which may be issued with the amended Mortgagee Policy T-2.

Item 2006-34 - Adoption of an amendment to the Restrictions, Encroachments, Minerals Endorsement - Owner Policy T-19.1 to conform to the new American Land Title Association Endorsement 9.5-06, which may be issued with the amended Owner Policy T-1.

Item 2006-35 - Adoption of an amendment to the Tertiary Facultative Reinsurance Agreement (Type I) Form T-21.1 to conform to the amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-36 - Adoption of an amendment to the Tertiary Facultative Reinsurance Agreement (Type II) Form T-21.2 to conform to the amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-38 - Adoption of a new Procedural Rule (P-67) to provide better auditing tools regarding Insured Closing and Settlement Letters and to ensure compliance with Texas Insurance Code Chapter 2702.

Item 2006-39 - Adoption of a new Procedural Rule (P-68) to clarify that Insurance Code §§521.101 - 521.103 applies to the title industry and to ensure title industry compliance with the statute.

Item 2006-40 - Adoption of an amendment to Procedural Rule P-1, subparagraph f to conform the definition of closing the transaction to the statutory definition of closing the transaction in Insurance Code §2501.006.

Item 2006-43 - Adoption of an amendment to Insuring Forms T-7, T-1, T-1R, T-2, T-2R, and T-44 to remove outdated language regarding the consumer complaint notice.

Item 2006-44 (partial) - Amended submission to amend the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers in Section V to add language to Minimum Escrow

Account Procedures and Internal Controls 18 to help identify fraudulent real estate transactions.

Item 2006-45 - Adoption of an amendment to Administrative Rule L-1 to clarify that a title insurance agent may not commence business in a county until authorized by the Department.

Item 2006-46 - Adoption of an amendment to Administrative Rule L-2 to require attorneys who are licensed escrow officers to close the transaction in the title agent's name, to require attorneys who are licensed escrow officers to use the title agent's escrow account, and to require escrow officers to keep a current address on file with the Department.

Item 2006-47 - Adoption of an amendment to Administrative Rule L-2 to clarify that a non-attorney employee of an attorney must be licensed as escrow officer prior to performing the duties of an escrow officer.

Item 2006-48 - Adoption of an amendment to Administrative Rules L-1 and L-2 to ensure that the Title Agent and Escrow Officer licensing procedures are consistent with the Texas Business Organizations Code, which went into effect on January 1, 2006, and to simplify the merger, exchange, and conversion process when an organizational restructuring results in a less than 50% change in ownership.

Item 2006-49 - Adoption of an amendment to Administrative Rule G-1 to clarify that Policy Guaranty Fees must be postmarked on or before the due date to be considered timely.

Item 2006-50 - Adoption of an amendment to the Texas Title Insurance Statistical Plan to correct the listing of the County Code for Nolan County, to remove the Property Classification Codes for Texas Operations, and to add a new Standard Endorsement Code for Texas Operations relating to the Restrictions, Encroachment, Minerals Endorsement - Owner's Policy (T-19.1).

Item 2006-65 - Adoption of an amendment to Procedural Rule P-24 to provide restrictions on a title insurance company, agent, or direct operation regarding prior written agreements that deviate from the premium split set forth in P-24. The amendment changes the premium split for transactions involving an insured policy amount in excess of \$125,000 by requiring that payment shall not exceed fifty percent for furnishing title evidence, or furnishing title evidence and title examination, and shall not exceed fifty percent for closing the transaction, or closing the transaction and title examination. The amendment also restricts prior written agreement arrangements by requiring that prior written agreements must be entered into 90 days prior to closing and by stipulating that the parties to the agreement must be licensed in the same or in contiguous counties when an insured policy amount is \$125,000 or less. The amendment further requires that all payments must be remitted within 30 days after the date of recording of the conveying instrument and that the prior written agreement restrictions apply also to escrow officers.

The Department has filed a copy of each of the amendments adopted by reference with the Secretary of State's Texas Register Section. Persons desiring copies of the adopted amendments may obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701-3938. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Item 2006-4

Comment: One commenter noted that the reference to the term "land" in paragraph 1 of Item 2006-4, regarding T-31.1, should be capitalized to conform to capitalization standards used in Items 2006-24 and 2006-26.

Agency Response: The Department agrees that the reference to the term "land" should be "Land" and has made the correction for consistency and clarity. This comment was received after the expiration of the comment period but has been included to address a nonsubstantive typographical correction.

Item 2006-5

Comment: One commenter noted that Item 2006-5, regarding Form T-35, refers to paragraphs in the old Mortgagee Policy which will be replaced with new references with the adoption of Item 2006-26.

Agency Response: The Department agrees that the reference to "Conditions and Stipulations" should be "Conditions." The Department also agrees that the reference to Section 2(c)(ii) in paragraph 4 should be Section 1(a). The Department has corrected these errors for consistency and clarity. This comment was received after the expiration of the comment period but has been included to address a nonsubstantive typographical correction.

Item 2006-10 and Item 2006-16

Comment: One commenter generally noted that Item 10, regarding P-66, may be inconsistent with Item 16, regarding P-45. Another commenter suggested that Paragraph B(6) of Item 2006-10, regarding P-66, should include the same language as Item 2006-16 regarding the proposed P-45 so that both rules read consistently. The commenter also suggested that the term "Mortgagee Policy" should be revised to "Loan Policy" to be consistent with Item 2006-26 and Item 27. The commenter further suggested that the term "Owner Policy" should be revised to "Owner's Policy" to be consistent with Item 24 and Item 27.

Agency Response: The Department agrees and has made the requested changes for clarity and consistency.

Item 24 and Item 26

Comment: One commenter generally suggested that adoption Items 2006-24 and 2006-26 may necessitate a need for amendments to the Owner Policy Rejection Form (T-56).

Agency Response: The Department will review and consider all future proposals regarding this issue. This comment was received after the expiration of the comment period but has been included to acknowledge the concern raised by the commenter.

Item 2006-27

Comment: One commenter suggested that paragraph bb of Item 27 regarding the proposed P-1 should be revised to correct a software conversion problem that caused the language to be scrambled in the proposal. The commenter has requested that the paragraph be revised to reflect proper grammar as contained in the original filing on August 30, 2007, and considered at the September 5 hearing. The commenter further suggested that paragraph ee of P-1 incorrectly references the Conditions of the Loan Policy as "T-1" and that the form number should be revised to "T-2" to reflect the correct form number the Conditions of the Loan Policy.

Agency Response: The Department agrees and has made the requested changes for clarity and consistency.

Item 2006-38

Comment: One commenter requested that the effective date for Item 2006-38, regarding P-67, be either October 1, 2008, or six months from the date of the Commissioner's Order adopting the rule in order to provide sufficient lead time for underwriters to retool their databases to capture all of the items listed in P-67 and to upgrade their data gathering capabilities to comply with the new rule. The commenter also requested that language be added to P-67 to expressly provide that title insurance companies may restrict the online access of title insurance agents and direct operations to only that portion of the electronic database record which pertains to the transactions in which real estate loans were closed or will be closed by that title insurance agent or direct operation. The commenter further requested that a document retention requirement of three years from the date the insured closing letter is issued be added to the rule.

Agency Response: The Department agrees that providing sufficient lead time for underwriters to retool their databases is reasonable. The effective date of Item 2006-38 will be October 1, 2008, in order to provide a sufficient transition time for all underwriters affected by the rule changes. The Department declines, however, to add language to expressly provide that title insurance companies may restrict the online access of title insurance agents and direct operations to only that portion of the electronic database record which pertains to the transactions in which real estate loans were closed or will be closed by that title insurance agent or direct operation. The language of P-67(a) already provides that title insurance companies "must maintain an electronic database record of each identifiable, specific transaction," and the record for which title insurance agents and direct operations are allowed access is the specific record created by that transaction. The singular reference to "the record" is sufficient to restrict the access of title insurance agents and direct operations to the electronic database record which pertains to the transactions in which real estate loans were closed or will be closed by that title insurance agent or direct operation. The Department also declines to include additional document retention requirements in P-67, as such an addition may be construed as a substantive change which would require publication in the *Texas Register* and a 30-day comment period.

Item 2006-44

Comment: Many commenters stated positions in opposition to Item 2006-44 regarding the proposed changes to Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for the Audit of Trust Funds of the Basic Manual. Commenters generally expressed concern regarding Departmental interpretation of the proposed changes, noting that the proposed version of Item 2006-44 excludes language that would have expressly included "search services" as a pass-through fee chargeable to consumers. Many commenters suggested that failure to allow the tax search service as an allowable pass-through fee would ultimately hurt consumers causing delays in closings and that the cost of multiple certificates from multiple taxing jurisdictions can exceed the cost of a single statement from a tax search service provider. Several commenters stated that failure to allow the tax search service as an allowable pass-through fee would also result in upward pressure on rates as the expense would be absorbed by title companies electing to use the service. Many commenters suggested that local taxing jurisdictions are not properly staffed to handle the volume of certificate requests that would occur should there be a shift from the usage of tax search services. Some commenters

pointed out that these services have been in usage for at least two decades. Many commenters raised concern over the current and projected backlog of requests through local taxing jurisdictions and suggested that this would cause significant delays in processing real estate closings. Several commenters suggested that the residential contract forms promulgated by the Texas Real Estate Commission (TREC) provide that it is the seller's responsibility to pay for "tax statements or certificates." Several commenters interpreted this language to mean that failure to allow the tax search service as an allowable pass-through fee conflicts with the TREC promulgated contract forms. Several commenters noted that a certificate from a taxing authority provides information on taxes levied by that authority only but that a tax search service provides comprehensive information from multiple taxing authorities in one service. Several commenters stated that tax information is not part of the title plant and that title companies must rely on third-party sources, either the taxing authority or a search service, for tax information. Many commenters also suggested that tax search services are more reliable, produce fewer claims than government issued certificates, and are not subject to state sovereign immunity when search mistakes do occur. Several commenters noted that tax search companies currently guarantee the accuracy of the information they provide. Several commenters also noted that the usage of tax search services reduces the cost of tax information through competition and that a shift to the exclusive usage of government issued certificates would increase the cost of the searches by eliminating competition. Several commenters also pointed out that tax search services provide additional information, such as Home Owner Association dues and assessments, that is not otherwise readily available. One commenter pointed out that the proposed instruction does not provide any guidance to the industry regarding the Department's position on the tax search service fee.

Agency Response: The Department will not adopt the proposed changes to Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for the Audit of Trust Funds of the Basic Manual at this time. However, the Department is aware of industry practices which may go beyond the scope of the current Specific Areas and Procedures 5 and will review any suggestions for future proposals regarding the issue of pass-through fees. Additionally, tax search services have always been considered to be part of overhead and that a fee for such services is not enumerated as a consumer pass-through fee in the language of the current Specific Areas and Procedures 5. The Department's decision not to adopt changes to Specific Areas and Procedures 5 at this time does not in any way alter the Department's position on this issue. Specific Areas and Procedures 5 does not disallow the use of tax search services, but merely reflects that such fees have already been accounted for in the rate for title insurance.

Item 2006-65

Comment: One commenter noted that the second paragraph of Item 2006-65 regarding the proposed changes to P-24 omits the '%' sign for the 90/10 category of the premium splits.

Agency Response: The Department agrees and has made the correction.

Comment: One commenter stated that the last sentence of the third paragraph of Item 2006-65 regarding the proposed changes to P-24, as written, may be erroneously construed to apply the 30-day payment requirement to subparagraph (ii) but not to subparagraph (i).

Agency Response: The Department disagrees that the wording of the paragraph is ambiguous. The Department, however, clarifies that the last sentence of the third paragraph is intended to apply to all payments, including payments made under both subparagraphs (i) and (ii) in the second sentence of the third paragraph of the amendment.

Comment: One commenter requested that the effective date for the third paragraph of Item 2006-65 regarding the proposed changes to P-24 be 120 days after the date of the Commissioner's Order adopting the rule in order to provide sufficient lead time for the parties to negotiate and execute prior written agreements. One commenter objected to the prior written agreements requirement in its entirety, stating that if the "payment shall not exceed language" requires a 50% payment for title evidence in the absence of a contract 90 days in advance and that such a requirement would make it uneconomical to handle title transactions for refinance lenders in numerous rural counties. The commenter further stated that restricting prior written agreements to contiguous counties for policy amounts of \$125,000 and under would make it uneconomical to handle title transactions outside the urban areas if the "payment shall not exceed" language requires that the payment must be exactly 90%.

Agency Response: The Department agrees that providing sufficient lead time for parties to negotiate prior written agreements under the new restrictions provided in the amended P-24 is reasonable. The effective date of Item 2006-65 will be July 1, 2008, in order to provide a sufficient transition time for all parties affected by the rule changes. The Department clarifies that the "payment shall not exceed" language of the rule necessarily means that the percentage splits in the rule apply in the absence of a prior written agreement. The Department disagrees that this requirement will make title transactions uneconomical for lenders in rural counties, because the July 1, 2008, effective date provides sufficient lead time for parties to negotiate prior written agreements. The Department further disagrees that restricting prior written agreements to contiguous counties for policy amounts of \$125,000 and under will make title transactions uneconomical for urban title companies. The overall promulgated premium is designed to be nonconfiscatory to all segments of the industry. P-24, as amended by Item 2006-65, protects smaller, rural agents from overreaching by larger, urban agents. The adopted amendments to P-24 were proposed by industry leaders in response to Departmental concerns regarding overreaching, and the Department believes that the current proposal provides safeguards against overreaching in the current market conditions. The Department will review and consider future proposals for adjustments to P-24 as market conditions evolve.

Comment: One commenter stated general opposition to Item 2006-65 regarding the changes to P-24, noting that the language of the rule regarding premium splits could be interpreted to mean that all premium splits must be based on net premium instead of gross premium.

Agency Response: The Department understands the concern raised by the commenter and would point out that P-24 has always been promulgated to require premium splits to be based on the net premium rather than the gross premium. This comment was received after the expiration of the comment period but has been included to provide guidance to the industry regarding the Department's position on the issue raised by the commenter.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For With Changes: National Closing Solutions; Texas Land Title Association; and Winstead.

Against Item 2006-44: Alamo Title Company; Alliant National Title Insurance Company; Data Trace; Edwards Abstract and Title Co.; Ellis County Abstract & Title Company, Inc.; Federal Title, Inc.; First American Title Insurance Company; Flint-Lambert; Gracy Title Company; Heath, Davis & McCalla; Heartland Security Insurance Group; Independence Title Company; Jefferson County Title Company; Kincy Abstract & Sabine Title Company; Land America Commonwealth Title Co.; Law Offices of John King; National Taxnet; North American Title; Nueces Title Company; Permian Abstract; Rattikin Title; Republic Title; San Jacinto Title Services; Sneed, Vine & Perry on behalf of Texas Land Title Association; Williams, Birnberg & Anderson, LLP; Winstead; Yoakum County Abstract Company; individual title agents; attorneys; and interested members of the public.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. The amendments are adopted pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes of Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective May 1, 2008. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-3938.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2008.

TRD-200801431

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 2, 2008

Proposal publication date: December 21, 2007

For further information, please call: (512) 463-6327



SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. The amendments are adopted pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes of Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules contained in the Texas Title Insurance Statistical Plan as amended effective May 1, 2008. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2008.

TRD-200801432

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 2, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 141. DISPUTE RESOLUTION-- BENEFIT REVIEW CONFERENCE

28 TAC §141.6

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of §141.6, concerning requesting interlocutory orders. This repeal is adopted without changes to the proposal as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 866).

The repeal of §141.6 is necessary due to House Bill 473 (HB 473) and Senate Bill 1169 (SB 1169), enacted by the 80th Legislature (2007), which amended Labor Code §410.032 and rendered §141.6 unworkable and outdated. These bills altered the process for requesting and issuing interlocutory orders. House Bill 473 restored authority to benefit review officers to issue interlocutory orders, gave the opposing party an opportunity to respond, and clarified that the authority to issue interlocutory orders includes the authority to order the payment or the suspension of benefits, or both. Senate Bill 1169 required the benefit review officer to issue an order no later than the third day after the receipt of a request for the order. These amendments to §410.032 facilitate requests for interlocutory orders to be acted on in an expedited manner; thereby providing for the prompt initiation or suspension of benefits during a period of dispute resolution. With the amendments to Labor Code §410.032, §141.6 is outdated since it was promulgated when the interlocutory orders were requested from and issued by central Division staff other than the benefit review officer that presided at the benefit review conference and where deadlines for requesting an interlocutory order existed that are no longer supported by the statute. Labor Code §410.032, as amended, provides detailed guidance on who may issue an interlocutory order, the time for issuing an order, the form for requesting an order (written or oral), an opportunity to respond to a request, and the issues that can be addressed in an order. Any revision of §141.6 would essentially be a restatement of the statutory requirements. Section 141.6

conflicts with the amendments to Labor Code §410.032. The Division has determined that the statutory requirements provide sufficient guidance to participants regarding their responsibilities and that further guidance by rule is unnecessary. For this reason, the Division adopts the repeal of §141.6.

The repeal of §141.6 removes the former process for requesting and issuing interlocutory orders. This repealed rule will not be replaced with another rule regarding interlocutory orders. The interlocutory orders process will now proceed as set forth in Labor Code §410.032.

Comment: Commentor stated it supports the repeal of §141.6 as the repeal of the rule is necessary due to the passage of HB 473 and SB 1169 by the 80th Legislature in 2007 which amended §410.032 of the Texas Labor Code and rendered §141.6 unworkable and outdated as these bills alter the process for requesting and issuing interlocutory orders. Commenter also states the Commissioner will need to adopt a new interlocutory order rule in the near future.

Agency Response: The Division agrees that §141.6 is no longer necessary. However, this repealed rule will not be replaced with another rule regarding interlocutory orders. The interlocutory orders process will now proceed as set forth in Labor Code §410.032. If a rule regarding interlocutory orders is required in the future, the Division will follow its process of obtaining stakeholder input.

For: Insurance Council of Texas

The repeal is adopted pursuant to Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2008.

TRD-200801474

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: April 6, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 804-4715

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Education Agency

Title 19, Part 2

TRD-200801494

Filed: March 18, 2008

vme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

TRD-200801466

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Filed: March 17, 2008

Proposed Rule Reviews

Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners files this notice of intent to review Chapter 575, Practice and Procedure. This review is conducted in accordance with Government Code, §2001.039.

The Board has conducted a review of the rules in Chapter 575 and has preliminarily determined that the reasons for adopting the chapter continue to exist, with 7 amendments, 10 new rules, and 2 repeals of rules, and 2 repeal and revise of rules. There are amendments to: §575.2, Filing of Documents; §575.3, Computation of Time; §575.4, Conduct and Decorum; §575.5, Subpoenas; Witness Expenses; §575.6, Procedures following Contested Case Hearing; §575.22, Reinstatement of Veterinary Licenses; and §575.27, Complaints--Receipt.

The proposed new rules are: §575.8, Final Decision and Orders; §575.9, Motions for Rehearing; §575.10, Costs of Administrative Hearings; §575.28, Complaints--Investigations; §575.29, Informal Conferences; §575.35, Temporary License Suspensions; §575.40, Cease and Desist Procedures; §575.50, Criminal Convictions; §575.60, Alternative Dispute Resolution (ADR); and §575.62, Negotiated Rulemaking.

The two rules proposed to repeal are: §575.31, Alternative Dispute Resolution (ADR); and §575.32, Negotiated Rulemaking.

The two rules proposed to repeal and revise are: §575.7, Costs of Appeal to be revised to §575.7, Presentation of Proposal for Decision; and §575.30, Criminal Convictions to be revised to §575.30, Contested Case Hearing at SOAH.

The proposed amendments, new rules, repeals, and repeal and revisions are published elsewhere in this issue of the *Texas Register*. The Commission proposes to readopt the remainder of Chapter 575 without changes.

All comments or questions regarding this notice of intent to review may be submitted in writing to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tb-

Texas Workforce Investment Council

Title 40, Part 22

The Texas Workforce Investment Council (Council) proposes the review of Title 40, Texas Administrative Code (TAC), Part 22, Chapter 901, Designation and Redesignation of Local Workforce Development Areas, pursuant to Texas Government Code, §2001.039 which requires state agencies to review and consider for readoption each of their rules every four years.

As required by Texas Government Code, §2001.39, the Council will accept comments as to whether the reason for readopting these rules continues to exist. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*.

Questions or written comments regarding this rule may be submitted to Cheryl Fuller, Director, Texas Workforce Investment Council, P.O. Box 2241, Austin, Texas 78768; by fax (512) 936-8118; or by email at twic@governor.state.tx.us.

TRD-200801433

Cheryl Fuller

Director

Texas Workforce Investment Council

Filed: March 13, 2008

Adopted Rule Review

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter DD, Procedures for Investigative Reports and Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter

97, Subchapters AA, BB, DD, and FF, in the August 10, 2007, issue of the *Texas Register* (32 TexReg 5035).

Relating to the review of 19 TAC Chapter 97, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules.

Relating to the review of 19 TAC Chapter 97, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA plans to propose changes as a result of the review to update Texas Government Code references.

Relating to the review of 19 TAC Chapter 97, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. Revisions to Subchapter DD, effective January 6, 2008, updated and clarified procedures for on-site investigations and reports and for accreditation sanctions resulting from such reports, established procedures for creating an administrative record for review by the State Office of Administrative Hearings, and changed the subchapter title to Investigative Reports, Sanctions, and Record Reviews. No additional changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 97, Subchapter FF, the TEA finds that the reasons for adopting Subchapter FF continue to exist and readopts the rules. Revisions to Subchapter FF, effective November 28, 2007, adopted in rule the *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2007, and incorporated other applicable updates to the rule. No additional changes are necessary as a result of the review.

The TEA received no comments related to the rule review of 19 TAC Chapter 97, Subchapters AA, BB, DD, and FF.

This concludes the review of 19 TAC Chapter 97.

TRD-200801493

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: March 18, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §157.38(c)

CONTENT AREAS	ECA	EMT-B	EMT-I	EMT-P
PREPARATORY	3	6	9	12
AIRWAY MANAGEMENT/VENTILATION	3	6	9	12
PATIENT ASSESSMENT	2	4	6	8
TRAUMA	3	6	9	12
MEDICAL	9	18	27	36
SPECIAL CONSIDERATIONS	3	6	9	12
CLINICALLY RELATED OPERATIONS	1	2	3	4
PEDIATRIC	3	6	9	12
MINIMUM UNITS IN CONTENT AREAS	27	54	81	108
ADDITIONAL UNITS IN ANY APPROVED CATEGORY	9	18	27	36
TOTAL REQUIRED FOR RECERTIFICATION ELIGIBILITY	36	72	108	144

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Agreed Final Judgment and Permanent Injunction

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: *State of Texas v. City of La Villa*, Cause No. D-1-GV-06-000018 in the 98th District, Travis County, Texas.

Nature of Suit: This is a suit for enforcement of an administrative order and rules of the Texas Commission on Environmental Quality concerning a drinking water facility and a waste water treatment plant owned and operated by the City of La Villa in Hidalgo County, Texas.

Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction settles all of the State's claims in the suit. The Agreed Final Judgment and Permanent Injunction contains provisions for injunctive relief, civil penalties, and attorney's fees. The proposed judgment will enjoin the City of La Villa to correct violations at its wastewater treatment plant. The judgment awards the State unpaid fees of \$3,294.44; unpaid administrative penalties of \$18,025; attorney's fees of \$3,500; and civil penalties of \$14,000.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052.

For more information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200801495

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 18, 2008

Capital Area Rural Transportation System

Public Notice

The Capital Area Rural Transportation System (CARTS) invites qualified General Contractors to submit proposals for the construction of an intermodal transit facility in Georgetown, Texas.

Request for Proposals (RFP) and Construction Documents will be available at CARTS Headquarters facility located at 2010 E. 6th St., Austin, Texas 78702-6050 beginning at 2:00 p.m., Wednesday March 26, 2008. A \$200.00 refundable deposit check payable to CARTS will be required for each set, with a maximum of four (4) sets per company.

A non-mandatory pre-proposal meeting will be held at the same address at 2:00 p.m., April 9, 2008.

The schedule is:

Wednesday, March 26: 2:00 p.m. - RFP Documents/CDs ready to be picked up by contractors.

Wednesday, April 9: 2:00 p.m. - Pre-Proposal Conference at CARTS.

Monday, April 21: 2:00 p.m. - Deadline for Proposal Questions.

Thursday, April 24 - Responses Distributed via electronic-mail only.

Wednesday, April 30: 2:00 p.m. - Proposals Due at CARTS.

Proposals will be evaluated on cost, qualifications, experience, and the quality and content of the submittal.

TRD-200801483

David Marsh

General Manager

Capital Area Rural Transportation System

Filed: March 17, 2008

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 7, 2008, through March 13, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 19, 2008. The public comment period for this project will close at 5:00 p.m. on April 18, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Mark Weidmann; **Location:** The project is located in Clear Lake, at 2022 Cove Park Drive, in Kemah, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 301396; Northing: 3270747. Project

Description: The applicant proposes to replace an existing structure installed by the previous owner. The applicant would build 20- by 34-foot boathouse and pier structure. In addition, the applicant proposes to dredge a 100- by 40-foot area. The dredged area would connect the project site to the MB Harbor Canal in order to provide access for a deeper draft boat. The applicant would dredge approximately 518 cubic feet of material to attain a 6.5 foot depth at mean low tide. All dredged material would be placed on uplands. CCC Project No.: 08-0093-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-974 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Trinity Bay Conservation District; Location: The proposed project is located in wetlands adjacent to East Galveston Bay, at the terminus of FM 562, on Smith Point, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 328484; Northing: 3267986. Project Description: The applicant proposes to fill 1.6 acres of wetlands to construct a water treatment plant. To compensate for impacts to wetlands, the applicant proposes to preserve 7.13 acres of wetlands and 0.07 acre of an unnamed tributary of Trinity Bay adjacent to the project site via Deed Restriction. CCC Project No.: 08-0094-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1485 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: EOG Resources, Inc.; Location: The project is located in Nueces Bay, beginning at the Rincon Channel on the east end, and extending the length of the Phillips Channel to the location of the proposed State Tract (ST) 690 Well #1. The project can be located on the U.S.G.S. quadrangle map entitled: CORPUS CHRISTI, Texas. Approximate UTM Coordinates for the proposed well location in NAD 27 (meters): Zone 14; Easting: 650,963; Northing: 3,081,139. Project Description: The applicant proposes to hydraulically maintenance dredge the Phillips Channel in Nueces Bay to a width of 70 feet and a depth of -6.5 feet MLLW. In addition, the applicant proposes to hydraulically dredge a new 160-foot by 345-foot access basin in ST's 750 and 690 at the west end of the Phillips Channel to a depth of -6.5 feet MLLW for access to, and creation of a work basin for the proposed ST 690 Well #1 surface location. This will result in the excavation of approximately 140,000 cubic yards of material which will be pumped into one of two confined Port of Corpus Christi Authority Dredged Material Placement Areas. After dredging is complete, the applicant will drill for petroleum resources in ST 690 and construct and install a 4985.5-foot pipeline by trenching a minimum of three feet below the bay bottom to the existing ST 690 well location on the east side of ST 690. Approximately 1,108 cubic yards of bay bottom material will be displaced during pipeline installation. The applicant's agent conducted an oyster, seagrass and sounding survey in the area of the referenced project over numerous dates between November 20, 2006 and September 26, 2007. Oyster reefs were mapped, and the project was modified to avoid direct impact to any of them. During dredging and pipeline operations, all reefs within 500 feet of the dredging, proposed drill site and proposed pipeline will be protected with turbidity curtains. The applicant also states that no drilling, dredging, seismic exploration, construction activity, or watercraft landing will occur within 1,000 feet of a rookery during nesting season between 15 February and 1 September. CCC Project No.: 08-0097-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1543 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200801491

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 18, 2008



Notice of Funds Availability - Texas Coastal Management Program Grants Program

The Coastal Coordination Council (Council) files this Notice of Funds Availability to announce the availability of §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of the CMP is to improve the management of the state's coastal resources and to ensure the long-term ecological and economic productivity of the coast.

A federal award to the state of approximately \$2 million in §306/§306A funding is expected in October 2009. The Council, which oversees the implementation of the CMP, passes through approximately 90% of the available §306/§306A funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

Eligible Applicants

The following entities are eligible to receive grants under the CMP.

1. Incorporated cities within the coastal zone boundary.
2. County governments within the coastal zone boundary.
3. Texas state agencies.
4. Texas public colleges/universities.
5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone).
6. Councils of governments and other regional governmental entities within the coastal zone boundary.
7. The Galveston Bay Estuary Program.
8. The Coastal Bend Bays and Estuaries Program.
9. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above. A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.

Funding Categories

The Council will accept applications for projects that address any of the following funding categories. The categories are not listed in order of preference.

1. Coastal Natural Hazards Response
2. Critical Areas Enhancement
3. Shoreline Access
4. Water Quality Improvement
5. Waterfront Revitalization and Ecotourism Development
6. Permit Streamlining/Assistance and Governmental Coordination
7. Information and Data Availability
8. Public Education and Outreach

Grant workshops will be held in five coastal cities to help potential applicants through the Guidance and Application Package. Grant workshops are opportunities for potential applicants to learn about the changes made to the grant program and to discuss specific project ideas with staff. Applicants are not required to attend a workshop, but attendance is strongly encouraged for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process.

Current subrecipients of CMP grant funding and their financial staff are also encouraged to attend the grant workshops. Project management training will be held immediately following the grant guidance and application portion of the workshop to educate subrecipients of the administrative requirements once a contract is executed. Project management training will cover the progress report, invoice, local match, budget amendment, timesheet, and equipment forms.

May 7, 2008, 10:30 a.m., Port Lavaca, City Hall, 202 N. Virginia.

May 14, 2008, 1:00 p.m., Port Arthur, City Hall, 444 Fourth Street, 5th Floor.

May 15, 2008, 9:00 a.m., Galveston, County Courthouse, 722 Moody, Workshop Room.

May 20, 2008, 1:00 p.m., Corpus Christi, Texas A&M University - Natural Resources Center, 6300 Ocean Drive, Room 1003.

May 21, 2008, 9:00 a.m., Port Isabel, Port Isabel Housing Authority - Community Center, 100 Hockaday.

To obtain a copy of the Guidance and Application Package, please contact Melissa Porter at (512) 475-1393, (800) 998-4GLO or at melissa.porter@glo.state.tx.us. The requirements to receive federal grant funds are outlined in the guidance. Written requests for the Guidance and Application Package should be addressed to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office (GLO), P.O. Box 12873, Austin, Texas 78711-2873. The Guidance and Application Package is also available on the GLO's website at: <http://www.glo.state.tx.us/coastal/grants/index.html>.

The deadline for receiving draft grant applications is Wednesday, June 25, 2008 by 5:00 p.m. Submission of a draft grant application is optional but is strongly recommended for first-time and/or inexperienced applicants who are unfamiliar with the CMP application process, applicants who have an idea for a new and/or innovative project, applicants who are uncertain if a project is eligible under this grant program, or applicants submitting research projects. Written comments will only be provided to applicants who submit draft grant applications by June 25, 2008 by 5:00 p.m. The deadline for receiving final grant applications is Wednesday, October 15, 2008 by 5:00 p.m. Draft grant applications and final grant applications must be mailed (regular, express, or certified) or hand-delivered to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, Stephen F. Austin Building, Room 335, 1700 North Congress Avenue, Austin, Texas 78701-1495. Facsimiles, electronic mail transmissions, and applications postmarked on or after the due date will not be accepted.

TRD-200801490

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 18, 2008



Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2008

The city of Marshall Creek (2061300) has abolished city sales and use tax and has merged with the city of Roanoke. The 1 percent local sales and use tax in Marshall Creek will be **abolished**, effective March 31, 2008, and local sales tax should now be reported as follows in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Roanoke (Denton Co)	2061131	.020000	.082500

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be **abolished**, effective March 31, 2008, in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
*Prairie View (Waller Co)	2237041	.015000	.080000
*Reno (Parker Co)	2184062	.010000	.077500
*Reno (Tarrant Co)	2184062	.010000	.072500

***Note:** No election held to reauthorize the city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code.

An additional 1/8 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Saginaw (Tarrant Co)	2220139	.016250	.082500
Sherman (Grayson Co)	2091028	.018750	.081250

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Keller (Tarrant Co)	2220111	.017500	.082500
La Vernia (Wilson Co)	2247012	.012500	.080000
Leon Valley (Bexar Co)	2015058	.012500	.080000
Streetman (Freestone Co)	2081048	.012500	.075000
Streetman (Navarro Co)	2081048	.012500	.080000

An additional 1/8 percent city sales and use tax for Sports and Community Venue will become effective April 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Sunset Valley (Travis Co)	2227070	.018750	.081250

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Marquez (Leon Co)	2145060	.015000	.082500

An additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code plus an additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will become effective April 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Paducah (Cottle Co)	2051017	.020000	.082500

An additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code plus an additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2008 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Flower Mound (Denton Co)	2061177	.015000	.082500
Miles (Runnels Co)	2200026	.015000	.082500
Miles (Tom Green Co)	2200026	.015000	.082500

An additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code plus an additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Ovilla (Dallas Co)	2070103	.017500	.080000
Ovilla (Ellis Co)	2070103	.017500	.080000

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be **reduced** to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2008 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Knox City (Knox Co)	2138014	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be **reduced** to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2008 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Nederland (Jefferson Co)	2123048	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be **reduced** to 3/8 percent and additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be **reduced** to 3/8 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2008 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Anson (Jones Co)	2127026	.020000	.082500

The additional 1/2 percent city sales and use tax for a Municipal Development Corporation as permitted under the provisions of Chapter 379A of the Local Government Code will be **abolished** and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2008 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Coppell (Dallas Co)	2057262	.017500	.082500
Coppell (Denton Co)	2057262	.017500	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** was **abolished** and the **adoption** of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2008 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Grapeland (Houston Co)	2113022	.015000	.082500

The Town Center Improvement District (5170503) has expanded the boundaries of the district to include additional area in Montgomery County & Harris County and changed the special purpose district's name to "The Woodlands Township." The District name change will become effective April 1, 2008. There is no change in the local code or the local sales tax rate.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
The Woodlands Township	5170503	.010000	SEE NOTE 1

The additional 1/2 percent sales and use tax for the Crime Control and Prevention District as permitted under Section 323.105, Texas Tax Code will be **reduced** to 3/8 percent and will become effective April 1, 2008 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Saginaw Crime Control District	5220585	.003750	.082500

The additional 3/8 percent sales and use tax for the Crime Control and Prevention District as permitted under Section 323.105, Texas Tax Code will be **reduced** to 1/4 percent and will become effective April 1, 2008 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Keller Crime Control District	5220683	.002500	.082500

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2008 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Coppell Crime Control District	5057501	.002500	SEE NOTE 2
Flower Mound Crime Control District	5061578	.002500	SEE NOTE 3
Flower Mound Fire Control District	5061587	.002500	SEE NOTE 4

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2008 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
La Vernia Municipal Development District	5247502	.005000	SEE NOTE 5
Pearland Municipal Management Dist. No. 1	5101650	.005000	SEE NOTE 6

A 1 percent special purpose district sales and use tax will become effective April 1, 2008 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Harris-Fort Bend Emergency Services District No. 100	5101669	.010000	SEE NOTE 7
The Woodlands Township Economic Development Zone	5170629	.010000	SEE NOTE 8

A 2 percent special purpose district sales and use tax will become effective April 1, 2008 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Montgomery County Emergency Services District No. 1	5170610	.020000	SEE NOTE 9

NOTE 1: The Woodlands Township is located within the unincorporated areas of Montgomery County and Harris County known as The Woodlands. The Woodlands Township Economic Development Zone and The Town Center Economic Development Zones No. 1, No. 2, No. 3 & No. 4 each have a special purpose district sales and use tax and are located within Montgomery County portion of The Woodlands Township. The development zones do not include all of The Woodlands Township. The area of The Woodlands Township that is in the unincorporated area of Harris County is also in the Houston MTA, which has a transit sales and use tax. ZIP Codes 77380, 77381, 77382, 77384 and 77385 are partially located within The Woodlands Township. Contact the district representative at (281) 363-2447 for additional boundary information

NOTE 2: The boundaries for the Coppell Crime Control & Prevention District are the same as the boundaries for the city of Coppell. The total rate in the city of Coppell will be 8 1/4%.

NOTE 3: The boundaries for the Flower Mound Crime Control & Prevention District are the same as the boundaries for the city of Flower Mound. The total rate in the city of Flower Mound will be 8 1/4%.

NOTE 4: The boundaries for the Flower Mound Fire Control, Prevention & EMS District are the same as the boundaries for the city of Flower Mound. The total rate in the city of Flower Mound will be 8 1/4%.

NOTE 5: The boundaries for the La Vernia Municipal Development District are the same as the boundaries for the city of La Vernia. The total rate in the city of La Vernia will be 8%

NOTE 6: The Pearland Municipal Management District No. 1 is located within the Harris County portion of the city of Pearland, which has a city sales and use tax. The boundaries of the district are not the same as the Harris County portion of the city of Pearland. Contact the district representative at (713) 860-6432 for additional boundary information.

NOTE 7: The Harris-Fort Bend Emergency Services District No. 100 is located in portions of the Mission Bend area of southwest Harris County, which is in the Houston MTA, and portions of the northeast area of unincorporated Fort Bend County. The unincorporated areas of Harris and Fort Bend Counties in ZIP Codes 77082, 77083, 77450, 77469 and 77494 are partially located within the Harris-Fort Bend Emergency Services District No. 100. Contact the district representative at (713) 984-8222 for additional boundary information.

NOTE 8: The Woodlands Township Economic Development Zone is located entirely within the Montgomery County portion of The Woodlands Township, which has a special purpose district sales and use tax. The zone does not include all of the Montgomery County portion of The Woodlands Township SPD. ZIP Codes 77380, 77381, 77382, 77384 and 77385 are partially located within The Woodlands Township Economic Development Zone. Contact the district representative at (281) 363-2447 for additional boundary information.

NOTE 9: The Montgomery County Emergency Services District No. 1 is located in the northeastern portion of Montgomery County. The district excludes territory in the cities of Panorama Village and Willis. The unincorporated areas of Montgomery County in ZIP Codes 77303, 77304, 77318, 77358 and 77378 are partially located within the Montgomery County Emergency Services District No. 1. Contact the district representative at (713) 984-8222 for additional boundary information.

TRD-200801468
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: March 17, 2008



Notice of Request for Proposals

Pursuant to Chapters 403 and 404, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (Trust Company) announces its Request for Proposals (RFP No. 183c) for Global Real Estate Trust Investment Management Services (Services) in connection with certain of the State's endowment funds managed by the Trust Company. The funds include various endowments, including the Tobacco Settlement Proceed Funds, the Rural Health Assistance Fund, and the Higher Education Fund (Funds). The Comptroller and the Trust Company are requesting proposals for the provision of investment management services for the Funds. If approved by the Trust Company, the successful respondent(s), if any, will be expected to begin performance of the contract, if any, on or about May 15, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, March 28, 2008, after 10:00 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. on Friday, March 28, 2008. The website address is <http://esbd.cpa.state.tx.us>

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, April 11, 2008. Respondents are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or before Friday, April 18, 2008, the Comptroller expects to post responses to questions as a revision to the electronic notice of the issuance of the RFP. Late Non-mandatory Letters of Intent and Questions received after the deadline will not be considered; all respondents are solely responsible for ensuring timely receipt of Questions and Letters of Intent in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (in ROOM G24) no later than 2:00 p.m. (CZT), on Friday, April 25, 2008. Late proposals received after this time and date will not be considered; all respondents are solely responsible for ensuring timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller and the Trust Company reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Trust Company are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Trust Company shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, March 28, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent & Questions Due - April 11, 2008, 2:00 p.m. CZT; Official Responses to Questions posted - April 18, 2008; Proposals Due - April 25, 2008, 2:00 p.m. CZT; Contract

Execution - May 15, 2008, or as soon thereafter as practical; Services Available under Contract - May 15, 2008.

TRD-200801508

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 19, 2008



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/24/08 - 03/30/08 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/24/08 - 03/30/08 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/08 - 04/30/08 is 6.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/08 - 04/30/08 is 6.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200801497

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 18, 2008



Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Energy Capital Credit Union (Houston) seeking approval to merge with Houston Highway Credit Union (Houston). Energy Capital Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801504

Harold E. Feeney

Commissioner

Credit Union Department

Filed: March 19, 2008



Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Firstmark Credit Union, San Antonio, Texas to expand its field of membership. The proposal would permit members of San Antonio Friends of the Parks, to be eligible for membership in the credit union.

An application was received from Cooperative Teachers Credit Union, Tyler, Texas to expand its field of membership. The proposal would permit employees of Goodwill Industries of East Texas who work in or are paid from Tyler, Texas, to be eligible for membership in the credit union.

An application was received from Cooperative Teachers Credit Union, Tyler, Texas to expand its field of membership. The proposal would permit employees of Exceptional Home Care who work in or are paid or supervised from Tyler, Texas, to be eligible for membership in the credit union.

An application was received from Delta Community Credit Union, Atlanta, Georgia to expand the field of membership of its branch office located in Southlake, Texas. The proposal would permit employees of G2 Secure Staff, L.L.C. who work in or are paid or supervised from Irving, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801503

Harold E. Feeney

Commissioner

Credit Union Department

Filed: March 19, 2008



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 28, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the

commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 28, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aguado Stone Incorporated; DOCKET NUMBER: 2007-1667-WQ-E; IDENTIFIER: RN105334353; LOCATION: Belton, Bell County, Texas; TYPE OF FACILITY: stone and rock supply business; RULE VIOLATED: 30 Texas Administrative Code (TAC) §327.5(a) and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of diesel fuel; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Albertson's LLC; DOCKET NUMBER: 2007-1994-AIR-E; IDENTIFIER: RN101382141; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: grocery store with gasoline dispensing; RULE VIOLATED: 30 TAC §114.100(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: \$1,040; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: Amerrock Products, LP; DOCKET NUMBER: 2007-1962-AIR-E; IDENTIFIER: RN100215243; LOCATION: Nolanville, Bell County, Texas; TYPE OF FACILITY: rockwool manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), New Source Review (NSR) Permit Number 9397/PSD-TX-625-M1, Special Condition (SC) 6, and THSC, §382.085(b), by failing to maintain cupola furnace oxygen flow at a minimum 38 standard cubic feet per minute; PENALTY: \$3,450; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Anjum Investments L.P. dba Star Travel Plaza; DOCKET NUMBER: 2007-1757-PST-E; IDENTIFIER: RN101435584; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: truck stop; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all underground storage tanks (USTs) are monitored in a manner which will detect a release; and 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; PENALTY: \$11,600; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Atrium Companies, Inc.; DOCKET NUMBER: 2007-1811-AIR-E; IDENTIFIER: RN100708619; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: window and door manufacturing plant; RULE VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit an annual emissions inventory update for the 2006 calendar year; PENALTY: \$2,625; ENFORCEMENT

COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: BK Services Inc. dba US 59 Fuel Mart; DOCKET NUMBER: 2007-1592-PST-E; IDENTIFIER: RN102356409; LOCATION: Rosenberg, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: \$2,675; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Cabot Corporation; DOCKET NUMBER: 2007-2013-AIR-E; IDENTIFIER: RN100221761; LOCATION: Pampa, Gray County, Texas; TYPE OF FACILITY: carbon black production plant; RULE VIOLATED: 30 TAC §111.111(a)(4)(A)(ii), Federal Operating Permit (FOP) Number O-1623, Special Terms and Conditions Number 1A, and THSC, §382.085(b), by failing to document a daily notation of the flare in the flare operation log; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the commission of a reportable emission event; and 30 TAC §101.20(3) and §116.115(b)(2)(F), Permit Number 40088/PSD-TX-934, General Condition Number 8, and THSC, §382.085(b), by failing to maintain particulate matter emissions; PENALTY: \$3,825; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2007-1730-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.115(c) and (b)(2)(F), NSR Permit Number 21265, General Condition 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.20(3) and §116.115(c), NSR Permit Number 5920A/PSD-TX-103M3, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$26,225; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 76023-1486, (713) 767-3500.

(9) COMPANY: Diamondback Pumping GP LLC; DOCKET NUMBER: 2007-1947-MLM-E; IDENTIFIER: RN105077275; LOCATION: Cresson, Johnson County, Texas; TYPE OF FACILITY: hydraulic fracturing company; RULE VIOLATED: 30 TAC §327.3(b), by failing to notify the agency as soon as possible but no later than 24 hours after the discovery of a spill or discharge; and 30 TAC §335.4(1) and the Code, §26.121(a), by failing to prevent the discharge of industrial waste; PENALTY: \$8,570; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Patrick Y. Shin dba Douglas Cleaners; DOCKET NUMBER: 2007-1780-DCL-E; IDENTIFIER: RN102192267; LOCATION: Cedar Hill, Dallas County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(e), by failing to renew the dry cleaner registration; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Eastex Lumber and Supply, LLC; DOCKET NUMBER: 2007-1877-PWS-E; IDENTIFIER: RN100677285; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1) and THSC,

§341.035(a)(2), by failing to provide accurate up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines in a watertight condition; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with openings that are covered with 16-mesh or finer corrosion resistant screen; and 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections on the water system's two pressure tanks; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2007-1787-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 1105, SC 14.C., and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13) COMPANY: Elite Drycleaners, Inc. dba Liberty Cleaners; DOCKET NUMBER: 2006-1450-DCL-E; IDENTIFIER: RN103970794; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,067; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Entergy Gulf States, Inc.; DOCKET NUMBER: 2008-0246-PST-E; IDENTIFIER: RN100660992; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c), by failing to submit initial/renewal UST registration and self-certification forms; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-1188-AIR-E; IDENTIFIER: RN100216159; LOCATION: Bay City, Matagorda County, Texas; TYPE OF FACILITY: polyethylene manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 17.E., FOP Number O-01635, SC Numbers 1.A. and 7, 40 Code of Federal Regulations (CFR) §60.482-6(a)(1) and §60.562-2(a), and THSC, §382.085(b), by failing to seal open-ended lines in volatile organic compound (VOC) service; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 18.B(1), FOP Number O-01635, SC Number 7, and THSC, §382.085(b), by failing to perform quarterly monitoring on connectors in VOC service; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 17.F., FOP Number O-01635, SC Numbers 1.A. and 7, 40 CFR §60.482-7(1) and §60.562-2(a), and THSC, §382.085(b), by failing to perform quarterly monitoring on valves in VOC service; 30 TAC §122.143(4), FOP Number O-01635, SC Number 1.A., 40 CFR §60.482-7(a) and §60.562-2(a), and THSC, §382.085(b), by failing to monitor valves in VOC service for two consecutive months after installation; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 17.F., FOP Number O-01635, SC Numbers 1.A. and 7, 40 CFR §60.482-7(d)(1) and §60.562-2(a), and THSC, §382.085(b), by failing

to re-monitor a valve in VOC service within 15 days of being replaced; 30 TAC §122.143(4), FOP Number O-01635, SC Number 1.A., 40 CFR §60.482-7(c)(2) and §60.562-2(a), and THSC, §382.085(b), by failing to re-monitor two valves leaking more than 10,000 parts per million for two consecutive leak-free months; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 17.I., FOP Number O-01635, SC Numbers 1.A. and 7, 40 CFR §60.482-9(a) and §60.562-2(a), and THSC, §382.085(b), by failing to repair one valve in VOC service by the end of the next unit shutdown; 30 TAC §122.143(4), FOP Number O-01635, SC Number 1.A., 40 CFR §60.482-4(b) and §60.562-2(a), and THSC, §382.085(b), by failing to re-monitor the pressure safety valve downstream of rupture disc RD-302 within five days after pressure release; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 9, FOP Number O-01635, SC Number 7, and THSC, §382.085(b), by failing to maintain the flare exit velocity at or below ten feet per second (fps); 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 9, FOP Number O-01635, SC Numbers 1.A. and 7, 40 CFR §60.18(c)(4), and THSC, §382.085(b), by failing to maintain the flare tip velocity below 60 fps; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 6, FOP Number O-01635, SC Number 7, and THSC, §382.085(b), by failing to maintain the flare British Thermal Units (BTU) value greater than 400 on a six-minute rolling average; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 7.A., FOP Number O-01635, SC Numbers 1.A. and 7, 40 CFR §60.18(c)(3)(ii), and THSC, §382.085(b), by failing to maintain the flare BTU value greater than 300; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18836, SC Number 8, FOP Number O-01635, SC Number 7, and THSC, §382.085(b), by failing to maintain a minimum steam-to-hydrocarbon ratio of less than or equal to two; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01635, General Conditions, and THSC, §382.085(b), by failing to report five deviations; 30 TAC §122.143(4), FOP Number O-01635, SC Number 1.A., 40 CFR §60.112a(a)(2), and THSC, §382.085(b), by failing to prevent the landing of the internal floating roof; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Air Permit Number 18836, SC Numbers 1 and 8, FOP Number O-01635, SC Number 1.A. and 7, 40 CFR §60.112a(a)(2), and THSC, §382.085(b), by failing to prevent the landing of the internal floating roof; PENALTY: \$51,984; Supplemental Environmental Project (SEP) offset amount of \$20,794 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-1715-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 18978, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report Incident Number 96455 within 24 hours after discovery; and 30 TAC §116.115(c), Air Permit Number 18978, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,431; Supplemental Environmental Project (SEP) offset amount of \$8,172 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: ExxonMobil Oil Corporation dba Mobil Chemical Company; DOCKET NUMBER: 2007-1840-IWD-E; IDENTIFIER:

RN100542844; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000462000, Effluent Limitations and Monitoring Requirement Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for toluene; PENALTY: \$5,740; Supplemental Environmental Project (SEP) offset amount of \$2,296 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: City of Graham; DOCKET NUMBER: 2007-1624-MWD-E; IDENTIFIER: RN101916880; LOCATION: Graham, Young County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10487001, Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total suspended solids (TSS), total ammonia nitrogen, total flow, and carbonaceous biochemical oxygen demand (CBOD); PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19) COMPANY: Santiago Guzman, Jr. and Josephine Guzman dba Guzman Quality Cleaners; DOCKET NUMBER: 2007-1764-DCL-E; IDENTIFIER: RN101681799; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the dry cleaner registration; PENALTY: \$1,152; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: JSW Steel (USA) Inc.; DOCKET NUMBER: 2008-0049-AIR-E; IDENTIFIER: RN100217421; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: steel mill; RULE VIOLATED: 30 TAC §122.146(2), FOP Number O-01832, General Terms and Conditions, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2007-1866-AIR-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 19155, SC Number 11, and THSC, §382.085(b), by failing to install a gasket that met the correct pipe specifications on the outlet piping; and 30 TAC §116.115(c), Permit Number 19613, SC Number 1, and THSC, §382.085(b), by failing to prevent the unauthorized release of 51 pounds of benzene; PENALTY: \$10,200; Supplemental Environmental Project (SEP) offset amount of \$4,080 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: May Man Corporation dba Nevon Food; DOCKET NUMBER: 2008-0245-PST-E; IDENTIFIER: RN102268620; LOCATION: Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Melissa

Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2007-1897-MWD-E; IDENTIFIER: RN102177458; LOCATION: Henderson County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013879001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits; PENALTY: \$35,150; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: City of Runaway Bay; DOCKET NUMBER: 2007-1564-MWD-E; IDENTIFIER: RN102181385; LOCATION: Wise County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010862001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for TSS, ammonia nitrogen, and CBOD; 30 TAC §305.125(17) and TPDES Permit Number WQ0010862001, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §305.125(17) and TPDES Permit Number WQ0010862001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the monthly discharge monitoring report (DMR); and 30 TAC §305.125(14) and TPDES Permit Number WQ0010862001, Monitoring and Reporting Requirements Number 10, by failing to sign and certify the DMRs; PENALTY: \$9,675; Supplemental Environmental Project (SEP) offset amount of \$7,740 applied to performing illegal dump site cleanups; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Robert Lerma, Jr. and Marta Villarreal dba G S I II; DOCKET NUMBER: 2007-1294-AIR-E; IDENTIFIER: RN104707633; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: abrasive cleaning and surface coating; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authority to operate a site with air emissions; and 30 TAC §106.433(8) and THSC, §382.085(b), by failing to maintain records at the plant; PENALTY: \$5,750; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: Dale M. Sommerfeld; DOCKET NUMBER: 2007-2003-LII-E; IDENTIFIER: RN103480398; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold a landscape irrigator license; PENALTY: \$250; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Southern Forest Products, LLC; DOCKET NUMBER: 2007-1694-AIR-E; IDENTIFIER: RN102213907; LOCATION: Bon Weir, Newton County, Texas; TYPE OF FACILITY: sawmill; RULE VIOLATED: 30 TAC §116.110(a)(1) and §116.315(a) and THSC, §382.085(b), by failing to submit a permit renewal application; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: City of Streetman; DOCKET NUMBER: 2007-1729-MWD-E; IDENTIFIER: RN101919991; LOCATION:

Streetman, Freestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10471001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for TSS and five-day biochemical oxygen demand; and 30 TAC §305.125(17) and TPDES Permit Number 10471001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: \$4,805; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-2045-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing company; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$5,000 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: USA IDOL Inc dba Stop & Go 5; DOCKET NUMBER: 2008-0247-PST-E; IDENTIFIER: RN105136238; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(31) COMPANY: Se Yon Oh dba US Food Mart 107; DOCKET NUMBER: 2007-1638-PST-E; IDENTIFIER: RN101870491; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II Vapor Recovery System (VRS); 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; and 30 TAC §115.246(3) and (4) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; PENALTY: \$14,625; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: US Petroleum Depot, Inc.; DOCKET NUMBER: 2007-1735-AIR-E; IDENTIFIER: RN105195317; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: petroleum products bulk tank terminal; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a Permit by Rule; PENALTY:

\$2,850; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(33) COMPANY: Robert L. Weaver; DOCKET NUMBER: 2007-1557-WOC-E; IDENTIFIER: RN103865747; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5 and §30.331(b) and the Code, §26.0301 and §37.003, by failing to hold the appropriate license issued by the commission when engaged in the occupation of operating a domestic wastewater treatment facility; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Wyler Industrial Works, Inc.; DOCKET NUMBER: 2007-1937-AIR-E; IDENTIFIER: RN100817147; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: machine shop that dispenses fuel for motor vehicle use; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to ensure the gasoline sold as motor vehicle fuel contained a minimum of 2.7% oxygen by weight; PENALTY: \$920; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(35) COMPANY: Zam, Inc. dba Circle A Grocery; DOCKET NUMBER: 2007-1846-PST-E; IDENTIFIER: RN102446713; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified as listed on the Station's UST registration and self-certification form; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; PENALTY: \$12,500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200801486

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 18, 2008



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be pub-

lished in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 28, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 28, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Asuda Holdings LLC dba Shell at Rosemeade; DOCKET NUMBER: 2004-1314-PST-E; TCEQ ID NUMBER: RN101532281; LOCATION: 3976 Rosemeade Parkway, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of its petroleum underground storage tanks (USTs) at its facility; PENALTY: \$1,940; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: C. L. Castillo Builders, Inc.; DOCKET NUMBER: 2006-0777-WQ-E; TCEQ ID NUMBER: RN104949821; LOCATION: off of Graham Point Trail, Royse City, west of County Road 2524, between County Road 2522 and Country Road 2526, Hunt County, Texas; TYPE OF FACILITY: construction site for custom homes; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water at a construction site through a Texas Pollution Discharge Elimination System Construction General Permit; PENALTY: \$1,800; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Herndon Marine Products, Inc.; DOCKET NUMBER: 2006-0657-PST-E; TCEQ ID NUMBER: RN101526804; LOCATION: 314 Huff Street, Aransas Pass, Aransas County, Texas; TYPE OF FACILITY: shrimp processing plant with a fleet refueling station; RULES VIOLATED: 30 TAC §334.72, by failing to report to the agency a suspected release from above-ground storage tanks within 24 hours of its discovery; and 30 TAC §334.74, by failing to conduct a release investigation and confirmation within 30 days of the discovery of a suspected release; PENALTY: \$5,400; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Horizon Dairy; DOCKET NUMBER: 2007-0850-AGR-E; TCEQ ID NUMBER: RN102334661; LOCATION: 4483 East Farm-to-Market (FM) 219, Hico, Hamilton County, Texas; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: 30 TAC §321.33(b)(4), by failing to obtain authorization under a water quality individual permit for a CAFO where any part of the production area or land management units are located in a watershed or a segment listed on the current United States Environmental Protection Agency approved §303(d) list of impaired water bodies and where a total maximum daily load implementation plan has been adopted; PENALTY: \$2,020; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Kas Investments, Ltd. dba Convenience Plus; DOCKET NUMBER: 2004-0380-PST-E; TCEQ ID NUMBER: RN101761039; LOCATION: 6422 Stephen F. Austin Road, Jones Creek, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(i) and Texas Water Code (TWC), §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have cathodic protection system tested by a qualified corrosion specialist or corrosion technician within three to six months after installation and at a subsequent frequency of at least once every three years; PENALTY: \$3,750; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: K & M Michael, Inc. dba Kilgore Food and More; DOCKET NUMBER: 2005-0343-PST-E; TCEQ ID NUMBER: RN102959558; LOCATION: 2512 Highway 259, Kilgore, Gregg County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c), by failing to install overfill prevention equipment for the UST system; 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.8(c)(5)(C), by failing to permanently tag or label each UST fill tube at the facility with the number used to identify the tank on the registration and self-certification form filed with the commission; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii), and (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor piping for releases by means of a piping tightness test or in a manner at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to annually test the line leak detectors, by failing to monitor the tanks for releases in a manner at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to reconcile inventory records on a monthly basis and record the inventory volume measurement each operating day; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; PENALTY: \$16,000; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Pak - Baderia Enterprises, Inc. dba M & M Superette; DOCKET NUMBER: 2007-0212-PST-E; TCEQ ID NUMBER: RN102789617; LOCATION: 2800 Memorial Boulevard, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all required Stage II records on-site and make immediately

available for review upon request by a TCEQ representative; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(3)(J) and (L) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board (CARB) executive order(s), and free of defects that would impair the effectiveness of the system; PENALTY: \$4,725; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: South Hampton Resources, Inc. formerly known as South Hampton Refining Company; DOCKET NUMBERS: 1997-0180-AIR-E, 1997-0222-AIR-E, 1997-0440-IHW-E, 1998-0114-AIR-E, and 2000-0543-AIR-E; TCEQ ID NUMBERS: RN101995611 and RN102591955; LOCATIONS: FM 418 West, west of Silsbee and Highway 92, Silsbee, Hardin County, Texas; TYPES OF FACILITIES: petroleum product refinery and bulk loading terminal; RULES VIOLATED: 30 TAC §335.2 and §335.43 and 40 CFR §268.4(a)(3) and §270.1(b) and (c), by storing, processing, and/or disposing of hazardous waste in the Surface Impoundment without a permit or other authorization from the TCEQ; 30 TAC §335.6, by failing to notify the TCEQ of its storage, processing, and disposal of hazardous waste in the Surface Impoundment; 30 TAC §335.62 and TCEQ Agreed Order Docket Number 1994-0578-IHW-E, Ordering Provision Number 1.a., by failing to properly determine whether contaminated ground water was hazardous; 30 TAC §335.9(a)(1), by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped offsite for storage, processing, or disposal; 30 TAC §335.62 and §335.503(a) and (b) and Agreed Order Docket Number 1994-0578-IHW-E, Ordering Provision Number 1.e., by failing to conduct hazardous waste determinations and further classify the effluent from Tank Number 7 that was conveyed and placed in the Surface Impoundment; 30 TAC §335.431 (which incorporates 40 CFR §268.7(a)(1)), by failing to provide the required land disposal restriction notice for a shipment of hazardous waste sent on July 19, 1996 to Pure Solve, Inc. in Port Allan, Louisiana; 30 TAC §115.112(a)(2)(F) and §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 10, by failing to equip floating roof tank Numbers 1, 4, 40, 41, 48, 64, 65, and 66 with an approved seal system prior to storing material with a vapor pressure at or above 0.5 pounds per square inch absolute (psia) at maximum storage temperature; 30 TAC §101.20(1) (which incorporates 40 CFR §60.482-6(a)(1)) and 30 TAC §115.352(4) (formerly 30 TAC §115.352(a)(4)) and THSC, §382.085(b), by operating eight open-ended valves on volatile organic compound (VOC) lines (Valve Numbers 4155, 4153, 4154 on the slop oil tank; Valve Number 2403 near Heater H103; and Valve Numbers XV-069, 1823, 1830, and 1286A) that were not sealed with a second valve, a blind flange, a cap, or a plug and by failing to properly seal all valves in VOC service; 30 TAC §115.354(4) (formerly 30 TAC §115.324(a)(1)(A)) and THSC, §382.085(b), by failing to monitor emissions from the T-8 Unit process drain with an hydrocarbon gas analyzer (HGA); 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 1, by exceeding the VOC emissions limits from Tank Number 41, 48, and 66, as specified in the Maximum Allowable Emission Table; 30 TAC §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), 40 CFR §60.105(a)(4)(iii), and TCEQ Permit Number 3295, Special Condition Number 9.A., by failing to properly certify its continuous emission monitoring system (CEMS) for the hydrogen sulfide (H2S) concentration of the refinery fuel gas; 30 TAC

§115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit 3295, Special Condition Number 13, by storing material with a vapor pressure greater than 11.0 psia (later reported by South Hampton to be mostly a mixed aldehyde and alcohol stream) in pressurized tanks (Tank Numbers 72, 74, 75, 76, and 77) that did not have pressure gauges between the relief valves and rupture discs; 30 TAC §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit 3295, Special Condition Numbers 13 and 20, by storing material with a vapor pressure greater than 11.0 psia in pressurized tanks (Tank Numbers 72, 74, 75, 76, and 77), and the relief valves were not vented to a flare; 30 TAC §101.20(1) (incorporating 40 CFR §60.105(a)(11)) and THSC, §382.085(b), by failing to properly operate and record CEMS data on January 3, 11, and 30, 1996; February 3, 15, and 16, 1996; March 15, 16, and 31, 1996; and April 6, 9, 17, 23, and 30, 1996; 30 TAC §101.20(1) (incorporating 40 CFR §60.482 - 6(a)(1) and 30 TAC §115.352(4) (formerly 30 TAC §115.352(a)(4)) and THSC, §382.085(b), by failing to properly seal valves in VOC service and operated eight open-ended valves on VOC lines that were not sealed with a second valve, a blind flange, a cap, or a plug; 30 TAC §115.112(a)(1) and THSC, §382.085(b), by storing VOCs in tanks and reservoirs that did not have proper control equipment and that were incapable of preventing vapor or gas loss to the atmosphere; 30 TAC §§101.20(1), 115.115(a)(1), 115.116(a)(2), and 115.354(4) (formerly 30 TAC §116.115(a) and (b)), 40 CFR §60.110b, THSC, §382.085(b), and TCEQ Permit Number 3102, General Provision Number 5, by failing to conduct the required inspections and maintain records for the internal floating roof storage tanks to document whether these inspections did occur; 30 TAC §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), 40 CFR §60.18, and TCEQ Permit Number 3102, Special Condition Number 4, by failing to operate its flare in a manner that ensures adequate combustion and by failing to monitor the flare during operation; 30 TAC §115.112(a)(1) and THSC, §382.085(b), by storing VOCs in tanks and reservoirs that did not have control equipment and that were incapable of preventing vapor or gas loss to the atmosphere; 30 TAC §115.112(a)(1) - (3) and THSC, §382.085(b), by failing to have emission controls on Tank Number 7; 30 TAC §115.212(a)(3)(A)(i) and (ii) and THSC, §382.085(b), by failing to conduct all VOC loading and unloading in such a manner that all liquid and vapor lines were either equipped with fittings which made vapor-tight connections that closed automatically when disconnected or equipped to permit the discharge of residual VOC into a vapor recovery or vapor balance system; 30 TAC §101.20(1) (incorporating 40 CFR §60.104(a)(1)) and 30 TAC §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit 3295, Special Condition Numbers 2, 4, and 9C, by combusting fuel gas that contained H2S in excess of 0.1 grams per dry standard cubic feet (230 milligrams per dry standard cubic meter) in the facility heaters; 30 TAC §101.20(1) (incorporating 40 CFR §60.112b(a)(1)(ii)(B)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 10, by failing to equip Tank Numbers 1, 4, and 66 with secondary seals, or otherwise meet the requirements of Special Condition Number 10; 30 TAC §115.112(a)(1) and §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 10, by storing a volatile organic liquid with a vapor pressure in excess of 5.2 kilopascals in Tank Number 66 which did not have double vapor-mounted seals; 30 TAC §115.354(1)(A) (formerly 30 TAC §115.324(a)(1)(A)) and THSC, §382.085(b), by failing to monitor emissions from 11 separate process drains with an HGA; 30 TAC §§101.20(1) (incorporating 40 CFR §61.242-7(d)(1)), 30 TAC §115.352(2) (formerly 30 TAC §115.352(a)(2)), and §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 5, by failing to repair a leak from valves (Valve Numbers 1578 and 275) as soon as

practicable after it detected the leaks, but no later than 15 calendar days after the leak was discovered, except in the case of an allowable repair delay; 30 TAC §101.201(b) (formerly 30 TAC §101.6(b)(5) and (6)) and THSC, §382.085(b), by failing to create, within two weeks of an incident, complete records of the emissions released during an upset that occurred on February 23, 1997 when Tank Number 71 was over-pressurized; 30 TAC §115.352(2) and (3) and THSC, §382.085(b), by failing to properly tag and attempt to repair and/or repair two leaking valves (Valve Numbers 2166 and 266) in VOC service; 30 TAC §§101.20(1) (incorporating 40 CFR §60.112b(a)(2)(iii)), 30 TAC §115.541(a), and §115.542(a) and THSC, §382.085(b), by failing to properly empty and degas Tank Number 57 when it was taken out of service; 30 TAC §115.546(1)(A) - (C) and THSC, §382.085(b), by failing to maintain records of the chemical name and estimated liquid quantity contained in and removed from each transport vessel which was degassed or cleaned; 30 TAC §115.354(4) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), 40 CFR Part 60, Appendix F, §5.12, and TCEQ Permit Number 3295, Special Condition Numbers 2 and 9B, by failing to conduct a cylinder gas audit for the first quarter of 1998 on the CEMS used to measure and record the H2S concentration of the refinery fuel gas; 30 TAC §101.201(b) (formerly 30 TAC §101.6(b)) and §101.211(b) (formerly 30 TAC §101.7(c)) and THSC, §382.085(b), by failing to create complete records of all non-reportable upsets, maintenance, start-ups, and shutdowns with unauthorized emissions as soon as practicable, but no later than two weeks after upset/events occurred; 30 TAC §101.201(a) (formerly 30 TAC §101.6(a)) and THSC, §382.085(b), by failing to report the upset emissions from the flare (Emission Point Number (EPN) F-2) and/or flare area on May 28, 1999 and June 29, 1999; 30 TAC §101.211(a) (formerly 30 TAC §101.7(a)) and THSC, §382.085(b), by failing to properly report unauthorized emissions from a maintenance, start-up, and/or shut down activities; 30 TAC §101.211(a) (formerly 30 TAC §101.7(a)) and §116.115(c), THSC, §382.085(b), TCEQ Permit Number 3295, Special Condition Number 1, by failing to properly report the unauthorized emissions from the flare (EPN-2) from 0600 hours on October 19, 1999 to 2400 hours on October 20, 1999 that occurred due to a maintenance event on Boiler EPN B-1; 30 TAC §115.352(1)(B), (2), and (3) and THSC, §382.085(b), by failing to repair VOC leaks greater than 10,000 pounds per minute on four pumps (3944-P-139A, 3945-P-139B, 3947-P-7B, and 3965-P-204A) in the Penhex Unit within 15 calendar days after the leaks were found, or tagged and repaired during a unit shutdown if repair would create more emissions than the repair would eliminate. On November 30, 1999 the pumps were found to be leaking but were not tagged and were not repaired during the next unit shut down during the first week in January 2000; THSC, §382.085(b), by failing to prevent the unauthorized emission of 64 pounds of a tetralin (70%) naphthalene (30%) mixture over an eight hour period on April 23, 2001; and 30 TAC §116.115(c), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 1, by failing to maintain an emission rate below the allowable emission limit. Special Condition Number 1 of Permit Number 3295 limits the VOC emission rate at tank 41 (EPN TK-41) to 0.36 pounds/hour; PENALTY: \$274,433; Supplemental Environmental Project offset amount of \$137,216 applied to Texas Association of Resource Conservation & Development Areas, Inc. Water or Wastewater Assistance; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Virginia Enterprises, Inc. dba Super Food Store; DOCKET NUMBER: 2004-0407-PST-E; TCEQ ID NUMBER: RN102404985; LOCATION: 1410 West Virginia Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC

§334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(b)(2)(A)(ii)(I) and TWC, §26.3475(a), by failing to perform a piping tightness test for the pressurized line at least once per year on the UST system; 30 TAC §334.50(b)(1)(a) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii) and §334.48(c), by failing to reconcile inventory control records on a monthly basis which are sufficiently accurate to detect a release which equals or exceeds the sum of 1% of flow through plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and §334.48(c), by failing to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tanks on a daily basis; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain a copy of the CARB executive order for the Stage II recovery system; 30 TAC §115.246(3) and THSC, §382.085(b), by failing to maintain a record of maintenance conducted on any part of the Stage II equipment; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain a record of the results of the daily inspections of Stage II equipment conducted at the station; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform annual Stage II testing within the preceding 12 months and triennial Stage II testing within the preceding 36 months; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to train a Stage II facility representative and by failing to make each current employee aware of the purpose and correct operation of the Stage II equipment; PENALTY: \$7,200; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Western Trails Water Supply Corporation; DOCKET NUMBER: 2005-1335-MWD-E; TCEQ ID NUMBER: RN102096526; LOCATION: approximately 0.5 miles north of United States Highway 181 and approximately 3.5 miles northwest of the intersection of United States Highway 181 and FM Road 1518, Bexar County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.42(a) and TWC, §26.121(a), by failing to submit a permit application for the continued operation of the wastewater treatment facility after the permit had expired on March 1, 2005; and 30 TAC §30.350(j), by failing to employ a wastewater treatment plant operator holding a Class D license or higher; PENALTY: \$25,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200801487

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 18, 2008



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or

requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 28, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 28, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Husnain Aftab Enterprises, Inc. dba JR Mini Mart; DOCKET NUMBER: 2007-0698-PST-E; TCEQ ID NUMBER: RN103190393; LOCATION: 5320 North Main Street, Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4), (5), (6), and (7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records on-site at the facility and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and the Stage II vapor space manifold and dynamic pressure performance at least once every 36 months; and 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; PENALTY: \$4,725; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Hyesin Han Bouwhuis dba Uptown Cleaners; DOCKET NUMBER: 2006-1382-DCL-E; TCEQ ID NUMBER: RN104096292; LOCATION: 13120C Memorial Drive, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning facility and/or drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: KM Aviation, Inc.; DOCKET NUMBER: 2008-0076-AIR-E; TCEQ ID NUMBER: RN104372990; LOCATION: 5110 Voyager Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: aerospace surface coating facility; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by

failing to comply with Ordering Provisions Numbers 2.a. - 2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E; PENALTY: \$30,000; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Michael Lantz O'Neill dba Frontier Park Resort and Marina; DOCKET NUMBER: 2007-0449-MLM-E; TCEQ ID NUMBERS: RN101278034 and RN105161889; LOCATION: 6 miles east of Milam, Carrice Creek, Sabine County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §30.331(b) and Texas Water Code (TWC), §26.0301 and §37.003, by failing to obtain a wastewater operator's license prior to operating a permitted wastewater treatment and collection system; 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit, Effluent Limitations and Monitoring Requirements, Numbers 1, 2, and 6, by failing to comply with permitted effluent limits; 30 TAC §305.125(17) and TPDES Permit, Sludge Provisions, by failing to submit the annual sludge report for the reporting period ending July 31, 2006; 30 TAC §305.125(1) and TPDES Permit, Monitoring and Reporting Requirements, Number 1, by failing to submit all required parameter data as specified in the permit; 30 TAC §305.125(4), TWC, §26.121(a), and TPDES Permit, Permit Conditions, Number 2.g., by failing to prevent unauthorized discharges; 30 TAC §305.125(9) and TPDES Permit, Monitoring and Reporting Requirements, Number 7.a., by failing to properly report unauthorized discharges; 30 TAC §305.125(5) and §317.2 and TPDES Permit, Operational Requirements, Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §319.5(b) and TPDES Permit, Effluent Limitations and Monitoring Requirements, Number 1, by failing to collect and analyze effluent samples for fecal coliform bacteria five times per week; 30 TAC §319.7(c) and TPDES Permit, Monitoring and Reporting Requirements, Number 3.b., by failing to maintain required records; and 30 TAC §305.125(1) and TPDES Permit, Monitoring and Reporting Requirements, Number 7.c., by failing to submit a written report within five days of becoming aware of non-compliant effluent results that deviate from the permitted limitation by more than 40%; PENALTY: \$48,535; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Richard K. Song dba KS Cleaners; DOCKET NUMBER: 2007-0756-MLM-E; TCEQ ID NUMBER: RN103955639; LOCATION: 101 East Southwest Parkway, Suite 101, Lewisville, Denton County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(e), by failing to obtain a current dry cleaning facility registration certificate; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning containment; 30 TAC §337.20(e)(6), by failing to keep a weekly inspection log for each secondary containment structure; 30 TAC §335.4, by failing to prevent the unauthorized discharge of municipal hazardous waste; 30 TAC §335.9(a)(1), by failing to provide documentation concerning the quantity of waste generated and quantity of waste shipped off-site for disposal each calendar year; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay outstanding dry cleaner fees for TCEQ Financial Account Number 24001607 for Fiscal Years 2005 and 2006; PENALTY: \$7,650; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200801488
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 18, 2008

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**Notice of Opportunity to Comment on Shut Down/Default
Orders of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 28, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 28, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Virginia Setia dba Time Out Food Store 2; DOCKET NUMBER: 2004-0316-PST-E; TCEQ ID NUMBER: RN102852704; LOCATION: 12800 1/2 Woodforest Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(C) and

Texas Water Code (TWC), §26.3475(c)(2), by failing to provide proper overfill prevention for the underground storage tank (UST) system; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to regularly inspect the cathodic protection system at least every 60 days and to test the system as required; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct daily inventory control and monthly reconciliation of inventory control records; 30 TAC §334.50(b)(2)(A)(I) and TWC, §26.3475(a), by failing to equip pressurized piping with a proper leak detection system; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i) and TWC, §26.3475(a) and (c)(1), by failing to perform and document monthly monitoring of USTs for releases; PENALTY: \$34,650 STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200801489
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 18, 2008

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Texas Facilities Commission

Request for Proposal #303-8-11122-A

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the re-issuance of Request for Proposal (RFP) #303-8-11122-A with expanded zip code boundaries. TFC seeks a 5 to 10 year lease of approximately 3,247 square feet of office space in the Colleyville area, Tarrant County, Texas.

The deadline for questions is April 7, 2008 and the deadline for proposals is April 18, 2008 at 3:00 p.m. The award date is May 21, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=75655.

TRD-200801482
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 17, 2008

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	MDI of Abilene DBA Imaging Associates of Abilene	L06133	Abilene	00	02/28/08
El Paso	STC Constructors LP	L06154	El Paso	00	03/03/08
Throughout TX	Rio Grande Resource Corporation	L06151	Hobson	00	03/10/08
Throughout TX	Northern Shared Medical Services	L06142	Nacogdoches	00	02/28/08
Throughout TX	US Ecology Texas Inc	L06150	Robstown	00	03/10/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Abilene Diagnostic Clinic PLLC	L05101	Abilene	14	03/06/08
Abilene	Enprotec Inc	L04266	Abilene	15	03/10/08
Allen	Presbyterian Hospital of Allen	L05765	Allen	12	03/11/08
Alvin	Solutia Inc	L00219	Alvin	79	03/05/08
Alvin	Equistar Chemicals LP	L03363	Alvin	26	03/11/08
Amarillo	Coffee Memorial Blood Center	L04705	Amarillo	09	02/28/08
Austin	Austin Heart PA	L04623	Austin	53	03/06/08
Austin	Austin Radiological Association	L00545	Austin	138	03/06/08
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	77	03/10/08
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	27	03/11/08
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	97	02/28/08
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	76	02/28/08
Austin	Daughters of Charity Health Services of Austin DBA Dell Childrens Medical Center of Central Texas	L06065	Austin	05	02/28/08
Austin	St Davids Healthcare Partnership LP LLP DBA St Davids Medical Center	L05856	Austin	08	02/28/08
Baytown	Bayer Material Science LLC	L01577	Baytown	63	03/04/08
Baytown	Lanxess Corporation	L05810	Baytown	05	03/05/08
Baytown	Exxonmobile Refining and Supply Company	L01134	Baytown	64	03/05/08
Baytown	Rashid M Siddiqi MD PA	L06097	Baytown	01	03/06/08
Baytown	Chevron Phillips Chemical Company L P	L00962	Baytown	39	03/05/08
Beaumont	Exxonmobile Oil Corporation	L00603	Beaumont	84	03/05/08
Beaumont	Lifeshare Blood Centers	L04884	Beaumont	14	02/28/08
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	112	03/03/08
Bedford	Carter Bloodcare	L00630	Bedford	45	02/28/08
Beeville	Christus Spohn Health System Corporation	L04510	Beeville	26	06/06/08
Big Spring	ALON USA LP	L04950	Big Spring	10	03/10/08
Borger	WRB Refining LLC	L02480	Borger	52	03/05/08
College Station	Texas A&M University Environmental Health & Safety	L00448	College Station	129	03/05/08
Conroe	Drilling Specialties Company	L04825	Conroe	12	03/11/08
Corpus Christi	Coastal Bend Blood Center	L05694	Corpus Christi	06	03/05/08
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	93	02/28/08
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	94	03/04/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Corpus Christi	Valero Refining - Texas LP	L03360	Corpus Christi	26	03/05/08
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	45	03/05/08
Corpus Christi	Hooper Engineering Laboratories Inc	L02309	Corpus Christi	12	03/10/08
Corpus Christi	Methodist Hospitals of Dallas Radiology Services	L00659	Corpus Christi	54	03/10/08
Dallas	Baylor Radiology Center DBA Baylor University Medical Center	L05842	Dallas	09	02/28/08
Dallas	The University of Texas Southwestern Medical at Dallas	L00384	Dallas	98	03/05/08
Dallas	University of Texas Southwestern Medical at Dallas	L05947	Dallas	11	03/05/08
Dallas	Baylor University Medical Center	L01290	Dallas	88	02/28/08
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	91	02/28/08
Dallas	Presbyterian Healthcare System DBA Presbyterian Hospital of Dallas	L04288	Dallas	24	02/28/08
Deer Park	Equistar Chemicals LP	L00204	Deer Park	63	03/05/08
Deer Park	Total Petrochemicals USA INC	L00302	Deer Park	54	03/05/08
Denton	Texas Womans University	L00304	Denton	59	02/28/08
El Paso	Providence Memorial Hospital	L02353	El Paso	95	03/10/08
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L02365	El Paso	64	03/10/08
El Paso	East El Paso Physicians Medical Center	L05676	El Paso	06	03/10/08
El Paso	Providence Memorial Hospital	L02353	El Paso	94	02/28/08
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	80	02/28/08
El Paso	Blood Systems Inc DBA United Blood Services	L05841	El Paso	06	02/28/08
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L04758	El Paso	23	02/28/08
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	78	02/29/08
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	24	02/28/08
Fort Worth	Cooks Childrens Health Care System DBA Cook Childrens Medical Center	L04587	Fort Worth	12	02/28/08
Freeport	The Dow Chemical Company Texas Operations	L00451	Freeport	83	03/05/08
Freeport	BASF Corporation	L01021	Freeport	52	03/05/08
Galveston	The University of Texas Medical Branch	L01021	Galveston	77	02/28/08
Glen Rose	Glen Rose Medical Foundation Inc DBA Glen Rose Medical Center	L03225	Glen Rose	23	02/29/08
Greenville	Hunt Memorial Hospital District DBA Presbyterian Hospital of Greenville	L01695	Greenville	35	03/07/08
Harlingen	Valley Eye Center PA	L02639	Harlingen	11	03/01/08
Houston	E+ PET Imaging XXI LP	L05916	Houston	03	02/28/08
Houston	Houston Refining LP	L00187	Houston	61	03/05/08
Houston	Diagnos Inc Diagnos PET CT Imaging	L05971	Houston	04	03//05/08
Houston	Medical Clinic of Houston LLP	L01315	Houston	33	03/05/08
Houston	St Lukes Episcopal Health System Corporation DBA St Lukes Episcopal Health System and Texas Heart Institute	L00581	Houston	87	03/05/08
Houston	Nuclear Imaging Services	L05775	Houston	39	03/03/08
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	100	02/28/08
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	112	03/04/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	133	02/28/08
Houston	Baylor College of Medicine	L00680	Houston	97	02/28/08
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	111	02/28/08
Houston	Ben Taub General Hospital	L01303	Houston	65	02/28/08
Houston	CHCA West Houston LP DBA West Houston Medical Center	L05808	Houston	10	02/28/08
Houston	E+ PET Imaging VII LP	L05806	Houston	07	02/28/08
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston	L04452	Houston	47	02/29/08
Houston	Gulf Coast Regional Blood Center	L04755	Houston	08	02/28/08
Lake Jackson	Brazosport	L03027	Brazosport	27	03/05/08
Laporte	Sunoco Inc (R&M) DBA Sunoco Chemicals	L02778	Laporte	20	03/05/08
Longview	Eastman Chemicals Company	L00301	Longview	108	03/05/08
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	08	03/05/08
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	86	03/06/08
Lubbock	Grace Clinic of Lubbock DBA Grace Clinic	L06040	Lubbock	02	03/10/08
Lubbock	Lubbock Texas - Highland Medical Center LP DBA Highland Community Hospital	L02467	Lubbock	31	03/04/08
Lubbock	University Medical Center	L04719	Lubbock	97	02/28/08
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	44	02/28/08
McKinney	Raytheon Company	L05632	McKinney	05	02/28/08
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	40	02/29/08
Mesquite	Baylor Medical Center of Garland DBA Baylor Diagnostic Imaging	L04914	Mesquite	21	03/05/08
Nacogdoches	Nacogdoches Cardiac Center PA	L05982	Nacogdoches	01	03/05/08
New Braunfels	Christus Santa Rosa Health Care Corporation DBA Christus Santa Rosa Hospital - New Braunfels	L02429	New Braunfels	46	03/06/08
North Richland Hills	Dallas Cardiology Associates DBA Heartplace North Richland Hills	L05548	North Richland Hills	12	03/06/08
Odessa	Flint Hills Resources LP	L00547	Odessa	44	03/05/08
Orange	E I Dupont De Nemours & Co	L00005	Orange	70	03/05/08
Paris	Advanced Heart Care PA	L05290	Paris	25	03/07/08
Pasadena	Celanese LTD	L01130	Pasadena	72	03/07/08
Pasadena	Chevron Phillips Chemical	L00230	Pasadena	80	03/05/08
Pasadena	MEMC Pasadena Inc	L05129	Pasadena	10	03/04/08
Plano	Columbia Medical Center of Plano DBA Medical Center of Plano	L02032	Plano	87	03/07/08
Plano	Physician Reliance Network Inc DBA Texas Oncology Plano West Cancer Ctr	L05896	Plano	12	03/06/08
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	38	03/05/08
Port Arthur	The Premcor Refining Group Inc	L04871	Port Arthur	14	03/05/08
Port Arthur	Motiva Enterprises LLC	L05211	Port Arthur	10	03/08/08
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	24	03/05/08
Port Lavaca	Union Carbide Corporation - Seadrift Operations	L00051	Port Lavaca	88	03/05/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Richardson	Truglo Inc	L05519	Richardson	05	03/10/08
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	174	03/06/08
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	28	03/06/08
San Antonio	Alamo Cement Company LTD	L04951	San Antonio	09	03/10/08
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	175	03/06/08
San Antonio	Medical and Radiation Physics Inc	L01417	San Antonio	28	03/11/08
San Antonio	Methodist Healthcare Sys. of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	23	02/28/08
San Antonio	City Public Service	L02876	San Antonio	23	03/05/08
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	13	02/28/08
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	99	02/29/08
San Antonio	Texas Cancer Clinic	L05786	San Antonio	09	02/28/08
Sherman	Sherman Heart Group	L05498	Sherman	08	03/03/08
Sugar Land	E+ PET Imaging XI LP DBA PET Imaging of Sugar Land	L05858	Sugar Land	05	02/28/08
Sweeny	Conocophillips Company Sweeny Complex	L00337	Sweeny	52	03/05/08
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation DBA Scott and White Memorial Hospital	L00331	Temple	81	02/28/08
Texas City	Valero Refining Company	L02578	Texas City	34	03/05/08
Texas City	Marathon Petroleum Company LLC	L04431	Texas City	25	03/03/08
Texas City	BP Products North America Inc	L00254	Texas City	62	03/05/08
The Woodlands	Lexicon Pharmaceuticals Inc	L04932	The Woodlands	19	03/05/08
The Woodlands	Sigma Genosys LP	L04555	The Woodlands	15	03/10/08
The Woodlands	E+ Pet Imaging VIII LP DBA PET Imaging of the Woodlands	L05747	The Woodlands	10	02/28/08
Throughout TX	RSI Inspection LLC	L05624	Abilene	13	03/05/08
Throughout TX	Brooks Well Servicing Inc DBA Key Electric Wireline	L06003	Alice	01	03/07/08
Throughout TX	Team Industrial Services	L00087	Alvin	181	03/11/08
Throughout TX	Texas Department of Transportation Construction Division	L00197	Austin	136	03/05/08
Throughout TX	Exxonmobile Chemical Company	L01135	Baytown	70	03/05/08
Throughout TX	Phoenix Non Destructive Testing Co	L04454	Channelview	53	03/03/08
Throughout TX	STC Constructors LP	L06154	El Paso	01	03/05/08
Throughout TX	TXU Mining Company LP DBA Luminant Mining	L04316	Elgin	24	02/29/08
Throughout TX	Weatherford International Inc	L04286	Fort Worth	75	03/11/08
Throughout TX	Weatherford US LP	L05291	Fort Worth	20	03/03/08
Throughout TX	Gray Wireline Service Inc	L03541	Fort Worth	27	02/29/08
Throughout TX	Permian Nondestructive Testing Inc	L06001	Gardendale	07	02/28/08
Throughout TX	D-Arrow Inspection Inc	L03816	Houston	82	02/28/08
Throughout TX	Wood Group Logging Services Inc	L05262	Houston	27	02/28/08
Throughout TX	HVJ Associates Inc	L03813	Houston	36	03/03/08
Throughout TX	The University of Texas Health Science Center at Houston	L02774	Houston	54	03/11/08
Throughout TX	Petrochem Inspection Services Inc	L04460	Houston	84	03/07/08
Throughout TX	Integrated Production Services Inc	L06051	Iowa Park	02	02/28/08
Throughout TX	J V Industrial Co LTD	L05785	La Porte	08	03/05/08
Throughout TX	Master Industries Inc	L05872	Liberty	16	02/29/08
Throughout TX	Hi-Tech Testing Service Inc	L05021	Longview	69	03/05/08
Throughout TX	L & G Engineering Laboratory LLC	L05647	Mercedes	06	02/27/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Throughout TX	American X-Ray & Inspection Services Inc DBA A X I S Inc	L05974	Midland	10	03/07/08
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	82	03/12/08
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	140	03/12/08
Throughout TX	Midwest Inspection Services	L03120	Perryton	105	02/26/08
Throughout TX	General Electric Company DBA GE Healthcare	L05653	Spring Branch	05	03/05/08
Throughout TX	General Electric Company DBA GE Healthcare	L05653	Spring Branch	06	03/07/08
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	146	03/03/08
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	64	02/08/08
Tyler	Carter Bloodcare	L04826	Tyler	12	02/28/08
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	14	03/10/08
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	24	03/07/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Garland	Baylor Medical Center at Garland	L02398	Garland	14	02/29/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200801513
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 19, 2008

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Texas Interagency Council for the Homeless

Announcement of Public Forums to Solicit Input on the State of Texas Ten Year Plan to End Homelessness

The Texas Interagency Council for the Homeless is soliciting input on the State of Texas Ten Year Plan to End Homelessness, as well as information on emerging trends and effective techniques in serving the homeless population. We are especially interested in learning where the state can be helpful with existing limited resources. This series of public forums will inform the draft State of Texas Ten Year Plan to End Homelessness. Once the draft is finalized, there will be a public comment period with hearings in various locations across the state. For more information on the Texas Interagency Council for the Homeless, visit the following website: <http://www.tich.state.tx.us/>.

The public forums will be held at the following times and locations:

Friday, April 4th at 9:00 a.m.

Joe C. Thompson Conference Center
Room 3.102

2405 Dedman Drive

Austin, TX 78713

Monday, April 7th at 10:00 a.m.

Dallas City Hall

1500 Marilla Street

Dallas, TX 75201

Thursday, April 10th at 10:30 a.m.

Rescue Mission of El Paso

1949 West Paisano Drive

El Paso, Texas 79922

Written comments can be addressed to the Texas Interagency Council for the Homeless, Brenda Hull, P.O. Box 13941, Austin TX 78711-

3941, or by email at brenda.hull@tdhca.state.tx.us. For more information on these hearings, please contact Brenda Hull at (512) 305-9038.

TRD-200801516

Michael Gerber

Executive Director

Texas Interagency Council for the Homeless

Filed: March 19, 2008

Texas Department of Housing and Community Affairs

Notice to Public and All Interested Mortgage Lenders

Mortgage Credit Certificate Program

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low and moderate income first-time homebuyers purchase a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described below may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed \$2,000. In order to qualify to receive a credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that credit certificates remain available under the Program. No credit certificates will be issued prior to 90 days from the date of publication of this notice nor after the date that all of the credit certificate amount has been allocated to homebuyers and in no event after December 31, 2010.

In order to satisfy the eligibility requirements for a certificate under the Program, (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Internal Revenue Code); (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Internal Revenue Code). Pursuant to the Gulf Opportunity Zone Act of 2005, residences in certain areas affected by Hurricane Rita are treated as targeted area residences. To obtain additional information on the Program, including the boundaries of current targeted areas as well as the

current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-0277.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-0277. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of §25 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation §1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-200801469

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 17, 2008

Request for Proposals to Provide Market Analysis of the McAllen-Edinburg-Pharr and Brownsville-Harlingen Metropolitan Statistical Areas

I. PURPOSE OF THE REQUEST

The Texas Department of Housing and Community Affairs (the Department or TDHCA) is requesting proposals to provide market analysis relating to affordable housing in the McAllen-Edinburg-Pharr and Brownsville-Harlingen Metropolitan Statistical Areas (McAllen and Brownsville MSAs). The McAllen and Brownsville MSAs include Hidalgo and Cameron counties as identified in Office of Management and Budget Bulletin No. 03-04. The market analysis report will be made available to the public and may be used by TDHCA to aid in decisions regarding its various programs.

II. SCOPE OF WORK

The selected proposal will evaluate the need for additional affordable rental housing in the McAllen and Brownsville MSAs and issue a user friendly report for TDHCA. The respondent will define and analyze submarkets within the McAllen and Brownsville MSAs as part of the overall report. Each submarket analysis will contain the following:

A. General and Demographic Information

1. Describe the submarket's general characteristics including a map and an explanation for the selection of the boundaries. Where applicable, proposed submarkets should consider submarket boundaries established by the local apartment association. Discuss the predominant form of local government and all local government jurisdictions including overlaps and shared responsibilities. Provide additional maps of the submarket clearly identifying major transportation linkages and significant area amenities including retail, medical and educational facilities. Submarket maps should be sufficiently detailed to allow the reader to identify specific sites within the boundaries. Include maps displaying population density.

2. Describe the current economy for the submarket including existing major industries and any new or anticipated major employment impacts including significant incentives offered for corporate relocation.
3. Provide 2000 US Census data, current year estimates and five year projections for population and households, citing current, commonly used and well documented data sources. Provide a breakdown of households by tenure, income, household size, and age of head of household. Provide an analysis of the trends and/or shocks indicated by the data.
4. Consider existing studies of housing demand for the McAllen and Brownsville MSAs conducted by other entities.

B. Housing Supply Analysis

1. Describe the existing housing supply including total number of units, occupancy, absorption, tenure, turnover, number of bedrooms, typical square footages, unit and development amenities and overall condition and quality of rental housing stock. Include information on population served (market rate, low income, and project-based assistance) and targeted population (family, independent senior and special needs populations). Provide occupancy rate for all Housing Tax Credit units by income group and number of bedrooms. Provide absorption information for all developments completed within the last two years.
2. Provide an analysis of the existing housing supply and its effect on the demand for new modern units. Include an inventory of all existing affordable housing, including Public Housing and location of Housing Choice Vouchers currently in use. Discuss waiting lists for affordable housing. Address condition and redevelopment plans for Public Housing Authority housing, and identify rental housing with significant reported code violations within each submarket.
3. Describe all rental developments with rents affordable to households earning up to 100% of the area median income including those approved by TDHCA, under construction or unstabilized (less than one year at 90% occupancy). Discuss planned properties in the submarket and provide an assessment of their impact on the market in relation to demographic trends. Include a property delivery timeline summarizing projected construction periods, placement in service, and lease-up periods.
4. Provide rental data including rental housing stock by population served (market rate, low income and project-based assistance) and type of occupancy (family, independent senior and special needs populations). Include current rents charged, typical concessions, market vacancy rates and absorption rates. Include a comparison of the market rents and the Housing Tax Credit program maximum rents. Submarket maps should provide location of individual market rate multifamily properties and location of individual subsidized affordable multifamily properties.

C. Analysis of Anticipated Demand

1. Provide detailed analysis of total demand by income group (less than 30%, 31% to 40%, 41% to 50%, 51% to 60% and 60% to 80%, 81% to 100% of AMFI), number of bedrooms, household size, and targeted population (family, independent senior, and special needs populations).
2. Provide a clear identification of the demand calculation methodology. The demand calculation methodology may ultimately be developed collaboratively with the Department. The demand calculation should include population and household growth and other sources that will be defined and mutually agreed to by the Contractor and the Department. The demand calculation methodology will be consistent throughout the market study based on targeted population. The demand calculation is not limited to that required under Title 10 of the Texas

Administrative Code §1.33. Two independent models of demand are required and are generally described below.

- a. Demand based upon strict need, comprised from:
 - i. Household growth;
 - ii. Cost overburdened households;
 - iii. Overcrowding;
 - iv. Substandard housing; and,
 - v. Demand from other non-overlapping sources.
- b. Demand based upon traditional transitory patterns, comprised from:
 - i. Household growth;
 - ii. Turnover; and,
 - iii. Demand from other non-overlapping sources.

3. The demand analysis should identify the demand for additional affordable housing units for the year with the most recent baseline data available and for four years following that year.

D. Summary and Conclusions Present summary and conclusions for each submarket in tables that identify the net affordable housing need under both a strict need demand and transitory pattern demand described in C.2.a. and b. of this Request for Proposal (RFP) by income group, number of bedrooms, and targeted population. The net affordable housing need equals the total demand less existing, approved, under construction and unstabilized supply.

E. Appendix Include demographic data used to complete the analysis, any relevant third party information, and a list of references cited in the body of the report.

III. RESPONSE TIME FRAME AND OTHER INFORMATION

Response submission period: March 13 - April 30, 2008

TDHCA Notification: May 23, 2008

Draft Analysis: September 1, 2008

Final Analysis: October 1, 2008

Proposals must comply with rules and statutes relating to purchasing in the State of Texas. Late and/or unsigned proposals will not be considered. The person submitting the proposal must have the authority to bind the organization in a contract. Submissions received after 5:00 PM (CST) on April 30, 2008 will not be considered.

Three hard copies of the proposal should be delivered to the following address: (facsimiles will not be accepted)

Texas Department of Housing and Community Affairs

Attn: Brenda Hull, Housing Resource Center

221 East 11th Street

P.O. Box 13941

Austin, TX 78711-3941

(512) 305-9038

All costs directly or indirectly related to the preparation of a response to this RFP shall be the sole responsibility of and shall be borne by the respondent.

It is the express policy of the Department that parties responding to this request refrain from initiating any direct contact or communication with members of the Board of Directors with regard to this Request for

Proposals during the selection process. Any violation of this policy will be considered a basis for disqualification.

Additional information regarding this RFP may be obtained from Brenda Hull at TDHCA. All requests must be in writing to (512) 469-9606 (fax) or brenda.hull@tdhca.state.tx.us (email). All questions and responses will be made available to all applicants via the Department's website (<http://www.tdhca.state.tx.us/>) and will be subject to disclosure under the Public Information Law.

TDHCA shall not be obligated to proceed with any action and may decide it is in the Department's best interest to refrain from pursuing any selection process.

IV. RESPONSE FORMAT

A. Each item in Section V of this Request for Proposals must be addressed.

B. Identify the item to be addressed in the introduction to each response.

C. Please limit your response to 22 pages of text with additional information such as sample work, additional resumes and references submitted in appendix form.

V. PROPOSAL CONTENT

A. General Information

Provide information regarding the applicant including, but not limited to:

1. Resumes of personnel assigned to the market analysis prepared under this RFP;
2. Number of market studies performed by the respondent for multi-family properties including those prepared according to the TDHCA Real Estate Analysis Rules and Guidelines; attach a descriptive list of types of assignments performed since 2002; a complete list of assignments performed is not necessary, but may be included in the appendix;
3. Description of market analysis similar in size and scope to that required by this RFP;
4. Description of familiarity with transactions involving federal and state housing programs;
5. Description of unique qualifications including experience specific to the market study area;
6. Certification that the respondent and its principals and key staff assigned to this proposal does not currently and is not anticipated to have an ownership interest in an entity that will apply for an allocation of funds or tax credits for affordable housing from the Department within twelve months of the due date; additional certification that the respondent and its principals and key staff assigned to this proposal does not currently and is not anticipated to have an ownership interest in an entity that will enter into contract to sell property associated with an allocation of funds or tax credits for affordable housing from the Department within twelve months; additional certification that the respondent has not been barred from receiving funds from the Department or has been removed from the Department's approved list of market analysts for failure to perform a market study with the Department's guidelines any time in the last 24 months.

B. Approach

1. Provide a list of the labeled submarkets with a description of the defined boundaries for each and the methodology used to determine the boundaries; include population of each;
2. Provide maps of the McAllen and Brownsville MSAs with each submarket clearly delineated and labeled;

3. Provide a description of the source data to be used and the methodology proposed for analysis;

4. Provide a sample demand calculation (all of C. Analysis of Anticipated Demand under the Scope of Work section above) for the submarket containing Harlingen in the proposal submitted under this RFP.

C. Work Plan and Schedule Provide a proposed work plan with specific dates for deliverables including market study outline, draft, and final draft. Identify resources to be dedicated to this assignment.

D. Fee Schedule Provide a proposed itemized cost schedule for the market analysis.

VI. SELECTION PROCEDURE

Proposals will be referred to a panel of TDHCA staff for evaluation and scoring. Staff will review proposals for compliance with the proposal content requirements and the potential for fulfillment of the scope of work criteria described herein. To assist in the preparation of the proposal, established criteria for review are provided below (weighted values in parentheses).

A. Evidence of respondent's experience in developing and conducting similar studies (25%).

B. Evidence that the conceptual framework - demand calculation, definition of submarkets, methods and analysis - is adequately developed and appropriate for the aims of the project (30%).

C. Submission of a realistic work plan, resources and timeline (20%).

D. A budget and explanation for the scope and quality needed for successful completion of the project. Emphasis placed on cost efficiency (25%).

VII. WORK MADE FOR HIRE

All work performed pursuant to this agreement specifically including all deliverables developed or prepared for TDHCA is the exclusive property of the State of Texas. All right, title and interest in and to said property shall vest in the State of Texas and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this agreement. To the extent that title to any work may not, by operation of law, vest in the State of Texas or such work that may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State of Texas.

TDHCA and/or the State of Texas shall have the right to obtain and to hold in its own name, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor agrees to give TDHCA and/or the State of Texas and any person designated by TDHCA and/or the State of Texas, reasonable assistance required to assert the rights defined in this paragraph.

VIII. LICENSE AGREEMENT

TDHCA shall grant to the awarded contractor a non-exclusive, irrevocable, world-wide, royalty-free, license to use, reproduce, distribute and display the materials created pursuant to this agreement, subject to the following terms and conditions. The license granted shall terminate on December 31, 2010 unless renewed by the parties in writing, terminated sooner in accordance with its terms, or if the agreement of which this clause is a part, is terminated for cause.

Each copy of the materials that the contractor distributes shall indicate on the cover that the creation of the material was funded by the Texas Department of Housing and Community Affairs. The contractor agrees that it will not charge a fee for the distribution of the materials, except to recover actual duplication and mailing costs. Contractor shall not

create derivatives of or modify the content of the materials except with the express written consent of TDHCA.

Failure to comply with the terms of this license may result in immediate termination of the license agreement by TDHCA. Upon termination of this license agreement, contractor shall return the remaining materials to TDHCA, or shall destroy or distribute them, in accordance with the instructions of TDHCA.

With the prior approval of the Department, the contractor may update the market analysis prepared under this RFP. In the 12-month period following the due date, the contractor is required to provide an explanation if a market analysis submitted to TDHCA contains conclusions that contradict the findings of the market analysis prepared under this RFP.

IX. OPEN RECORDS

Information submitted to TDHCA is public information and is available upon request in accordance with the Texas Public Information Act, Chapter 552 of the Government Code (the "Act"). An applicant submitting any information it considers confidential as to trade secrets or commercial or financial information, which it desires not to be disclosed, must clearly identify all such information in its proposal. If information so identified by an applicant is requested from TDHCA, the applicant will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination as to whether such information is excepted from disclosure under the Act. Information not clearly identified as confidential will be deemed to be non-confidential and will be made available by TDHCA upon request.

TRD-200801514

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 19, 2008

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of HEALTHPARTNERS ADMINISTRATORS, INC. to HEALTHPARTNERS ADMINISTRATORS, INC. (using the assumed name of HPAI), a foreign third party administrator. The home office is BLOOMINGTON, MINNESOTA.

Application to change the name of WISENBERG, POZMANTIER & CO., INC. (using the assumed name WISENBERG INSURANCE+RISK MANAGEMENT) to WELLS FARGO INSURANCE SERVICES OF TEXAS, INC. (using the assumed name WISENBURG MOTORSPORTS), a domestic third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200801512

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: March 19, 2008

Texas Lottery Commission

Instant Game Number 1042 "9's in a Line"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1042 is "9'S IN A LINE". The play style for this game is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1042 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1042.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$49.00, \$99.00, \$199 and \$900.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1042 - 1.2D

PLAY SYMBOL	CAPTION
2	
3	
4	
5	
6	
7	
8	
9	
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$9.00	NINE\$
\$19.00	NINTN
\$49.00	FRYNIN
\$99.00	NTYNIN
\$199	ONNYNN
\$900	NINHUN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1042 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
NIN	\$9.00
NNT	\$19.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$9.00 or \$19.00.

H. Mid-Tier Prize - A prize of \$49.00, \$99.00 or \$199.

I. High-Tier Prize - A prize of \$900.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1042), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1042-0000001-001.

L. Pack - A pack of "9'S IN A LINE" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last

page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "9'S IN A LINE" Instant Game No. 1042 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "9'S IN A LINE" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals three (3) 9's play symbols in any one row, column or diagonal, the player wins prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain three or more of a kind other than the 9 symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "9'S IN A LINE" Instant Game prize of \$1.00, \$2.00, \$3.00, \$9.00, \$19.00, \$49.00, \$99.00 or \$199, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$49.00, \$99.00 or \$199 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "9'S IN A LINE" Instant Game prize of \$900, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and

shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "9'S IN A LINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "9'S

IN A LINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "9'S IN A LINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 1042. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1042 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	2,016,000	10.00
\$2	1,344,000	15.00
\$3	537,600	37.50
\$9	201,600	100.00
\$19	67,200	300.00
\$49	25,200	800.00
\$99	5,628	3,582.09
\$199	3,360	6,000.00
\$900	252	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1042 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1042, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200801434

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 13, 2008



Instant Game Number 1047 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1047 is "BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1047 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1047.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, STACK OF BILLS SYMBOL, \$2.00, \$4.00, \$6.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000, \$3,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1047 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
STACK OF BILLS SYMBOL	WIN\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1047 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
SIX	\$6.00
EGT	\$8.00
TEN	\$10.00
TWL	\$12.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$1,000, \$3,000 or \$30,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1047), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1047-0000001-001.

L. Pack - A pack of "BREAK THE BANK" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 1047 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any of YOUR NUMBERS play symbols to any of the 3 LUCKY NUMBERS play symbols, the player wins the prize shown for that number. If the player reveals a "stack of bills" symbol, the player wins the prize instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The STACK OF BILLS (auto win) play symbol will never appear more than once on a ticket.

F. No duplicate non-winning YOUR NUMBER play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,400,000 tickets in the Instant Game No. 1047. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1047 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	4,536,000	11.11
\$4	2,923,200	17.24
\$6	806,400	62.50
\$8	201,600	250.00
\$10	504,000	100.00
\$12	604,800	83.33
\$20	302,400	166.67
\$50	186,900	269.66
\$200	41,580	1,212.12
\$1,000	1,050	48,000.00
\$3,000	154	327,272.73
\$30,000	26	1,938,461.54

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1047 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1047, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200801435
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 13, 2008



Instant Game Number 1052 "Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1052 is "JUMBO BUCKS". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1052 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1052.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, JUMBO SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1052 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
JUMBO SYMBOL	WINX2
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1052 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$2,000 or \$20,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1052), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1052-0000001-001.

L. Pack - A pack of "JUMBO BUCKS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUMBO BUCKS" Instant Game No. 1052 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. The "JUMBO" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.
- C. No more than two (2) duplicate non-winning prize symbols will appear on a ticket.
- D. No duplicate SERIAL NUMBERS play symbols on a ticket.
- E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- F. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).
- H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

- A. To claim a "JUMBO BUCKS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "JUMBO BUCKS" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- C. As an alternative method of claiming a "JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:
 - 1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

- 2. delinquent in making child support payments administered or collected by the Attorney General;
- 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
- 4. in default on a loan made under Chapter 52, Education Code; or
- 5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

- A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1052. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1052 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	787,920	10.20
\$4	659,280	12.20
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	39,262	204.78
\$200	6,499	1,237.11
\$2,000	31	259,354.84
\$20,000	17	472,941.18

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1052 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1052, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200801436
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 13, 2008



Instant Game Number 1062 "Monthly Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1062 is "MONTHLY BONUS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1062 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1062.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$200, \$2,000, \$10,000, and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1062 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
DOLLAR BILL SYMBOL	WIN
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND

\$2,000	TWO THOU
\$10,000	MO/20YRS
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$60.00, or \$200.

H. High-Tier Prize - A prize of \$2,000, \$20,000 or \$10,000/MO (\$10,000 per month for 20 years).

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1062), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1062-0000001-001.

K. Pack - A pack of "MONTHLY BONUS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of 001 and front 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONTHLY BONUS" Instant Game No. 1062 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONTHLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "DOLLAR BILL" play symbol, the player wins \$10,000 per month for 20 years. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. No more than four matching non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

G. The "DOLLAR BILL" (auto win) and \$10,000 prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.

H. The \$20,000 prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$60.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$50.00, \$60.00, or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONTHLY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. To claim a "MONTHLY BONUS" top level prize of \$10,000/MO for 20 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. When claiming a "MONTHLY BONUS" Instant Game prize of \$10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of \$120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of "\$2,400, 000".

2. Annually, via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of \$2,400,000.

3. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1062. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1062 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,600,000	9.38
\$10	800,000	18.75
\$15	200,000	75.00
\$20	400,000	37.50
\$25	100,000	150.00
\$50	200,000	75.00
\$60	37,375	401.34
\$200	6,000	2,500.00
\$2,000	210	71,428.57
\$20,000	40	375,000.00
\$10,000/MO	4	3,750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.49. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1062 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1062, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200801437
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 13, 2008

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is soliciting proposals from qualified entities to organize and operate an integrated one-stop service delivery system to deliver workforce development and child care program services in the 26 counties of the Texas Panhandle Workforce Development Area under a single contract.

Services provided through the One-Stop service delivery system will include but may not be limited to those funded and governed by the Workforce Investment Act, TANF/CHOICES, Food Stamp Employment and Training, Project RIO, Wagner-Peyser Employment Services and Child Care and Development Fund grants.

Proposers will be expected to demonstrate the capability to conduct workforce service delivery for all customer groups at the current level and also effectively incorporate the Board's stated priorities.

The initial term for any award resulting from this solicitation will be October 1, 2008 through September 30, 2009, with the possibility for renewal for up to three additional years.

The proposal schedule is expected to be as follows:

Release Request For Proposals (RFP) April 1, 2008

Proposers Conference April 17, 2008, 1:30 p.m.

Deadline for Questions April 23, 2008

Deadline for Submission May 21, 2008, 3:00 p.m.

Prospective proposers may request a copy of the RFP by sending the contact and organization names, and mailing and email addresses to Tony White, Assistant Director, Workforce Development, at twhite@theprpc.org. The RFP may also be obtained in person at PRPC, 415 West Eighth Avenue, Amarillo, Texas 79101 between 8:00 a.m. to 5:00 p.m., Monday through Friday.

TRD-200801441
Tony White
Assistant Director, Workforce Development
Panhandle Regional Planning Commission
Filed: March 14, 2008

Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on March 14, 2008, with the Public Utility Commission of Texas (commission) for an amendment to a certificated service area boundary.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity; for a Minor Boundary Change Between the Lake Houston Zone, Houston Metropolitan Exchange, (AT&T Texas) and the Humble Exchange of Central Telephone Company of Texas d/b/a Embarq. Docket Number 35468.

The Application: The minor boundary amendment is being filed to realign the boundary between the Lake Houston Zone of the Houston Metropolitan exchange of AT&T, and the Humble exchange of Central Telephone Company of Texas, d/b/a Embarq (Embarq). The proposed boundary amendment realigns the service boundaries to provide a logical boundary line between the two companies in the Blackstone Creek Subdivision. Embarq has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 4, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35468.

TRD-200801501
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2008

Notice of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 12, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35451 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City of Houston, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35451.

TRD-200801500
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2008

Notice of Application for Designation as an Eligible Resale Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 13, 2008, for designation as an eligible resale telecommunications provider (R-ETP) pursuant to Public Utility Commission Substantive Rule §26.419.

Docket Title and Number: Application of Quality Telephone Communications Corporation for Designation as an Eligible Resale Telecommunications Provider. Docket Number 35454.

The Application: The company is requesting R-ETP designation for purposes of reimbursement of costs associated with the provision of Lifeline Services.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by April 17, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35454.

TRD-200801499
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2008



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 13, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for one growth block to meet customer demand in the Rockwall rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources for Rockwall Rate Center. Docket Number 35457.

The Application: Southwestern Bell Telephone Company submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Southwestern Bell Telephone Company d/b/a AT&T Texas did not meet the month-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 2, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35457.

TRD-200801498
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2008



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 14, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for six-thousand block of num-

bers or a full code of 10,000 numbers to satisfy customer demand in the Spring rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources for Spring Rate Center. Docket Number 35467.

The Application: Southwestern Bell Telephone Company submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Southwestern Bell Telephone Company d/b/a AT&T Texas did not meet the month-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 2, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35467.

TRD-200801502
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2008



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 14, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for a full code of 10,000 numbers to satisfy the request of CITI Technology Infrastructure in the Roanoke rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 35470.

The Application: Southwestern Bell Telephone Company submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Southwestern Bell Telephone Company d/b/a AT&T Texas did not meet the month-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 2, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35470.

TRD-200801507
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 19, 2008



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).